

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TIMOTHY WHITE,)
)
 Plaintiff,)
)
 vs.) 3:11-CV-1817-B
)
 REGIONAL ADJUSTMENT)
 BUREAU, INC., d/b/a)
 RAB, INC.,)
)
 Defendant.)

MOTION FOR SANCTIONS - VOLUME 3
BEFORE THE HONORABLE JANE J. BOYLE
UNITED STATES DISTRICT JUDGE
OCTOBER 9, 2013

A P P E A R A N C E S
MARSHALL S. MEYERS, PRO SE:

WEISBERG & MEYERS, LLC
5025 N Central Avenue - #602
Phoenix, AZ 85012
888/595-9111

For Mr. Radbil:

MARTIN DISIERE JEFFERSON & WISDOM
808 Travis Suite 2000
Houston, TX 77002
713/632-1700
BY: DALE JEFFERSON
RAUL H. SUAZO

For the RAB:

ROBBIE L. MALONE
EUGENE E. MARTIN
8750 North Central Expressway - Suite 1850
Dallas, TX 75231
(214) 346-2631

SHAWNIE ARCHULETA, CSR/CRR
FEDERAL COURT REPORTER - 214.753.2747

**COURT REPORTER: SHAWNIE ARCHULETA, TX CCR No. 7533
1100 Commerce Street
Dallas, Texas 75242**

**proceedings reported by mechanical stenography,
transcript produced by computer.**

TRANSCRIPT OF PROCEEDINGS - VOLUME 3

MARSHALL MEYERS

| | |
|--------------------------------------|-----|
| Direct Examination By Ms. Malone | 14 |
| Narrative Testimony by Mr. Meyers | 109 |
| Cross-Examination by Mr. Jefferson | 152 |
| Redirect Examination by Ms. Malone | 172 |
| Recross Examination by Mr. Jefferson | 183 |

EXHIBITS ADMITTED INTO EVIDENCE

| EXHIBIT | DESCRIPTION | OFFERED/ADMITTED |
|--------------------------|--------------------|-------------------------|
| RAB Exhibits 1 - 42 | | 8 |
| Radbil Exhibits 1 - 34 | | 9 |
| Law Firm Exhibits 1 - 32 | | 9 |

**SHAWNIE ARCHULETA, CSR/CRR
FEDERAL COURT REPORTER - 214.753.2747**

1 (In open court at 10:00 a.m.)

2 THE COURT: Good morning. For the record,
3 this is Civil Action 3:11-CV-1817, Timothy White v.
4 Regional Adjustment Bureau.

5 We are here for the third, I guess,
6 hearing in connection with the defendant's motions
7 for sanctions for conduct alleged to have occurred
8 before, during, and after the trial in this case.

9 The documents that triggered this hearing
10 are document 120, which is the motion and then the
11 responsive briefing, and then document 119, which is
12 the original motion on the Rule 37 sanctions and the
13 responsive briefing.

14 We had two hearings. We left the last one
15 with still more to address, in particular the -- I
16 think Ms. Malone was attempting to call Mr. Meyers
17 to the stand. We had taken a continuance on all of
18 that so Mr. Meyers, pursuant to the Court's
19 admonishment, could understand his rights and what
20 the sanctions, potential sanctions were -- which I,
21 again, emphasize are not contempt, civil or
22 criminal, but their connection to allowing
23 sanctioning being in any way responsible for the
24 underlying conduct in this case during the trial and
25 after. So that was August; it's now October the

1 10th, third installment of this review of all this
2 conduct.

3 I want to begin by having the parties
4 introduce themselves for the record, and then let's
5 talk about the exhibits, where we are and where we
6 are going to go next, starting with counsel for the
7 Plaintiff.

8 MR. MEYERS: Good morning, Your Honor.
9 Marshall Meyers, appearing on behalf of myself and
10 Weisberg & Meyers. And Your Honor, I am terribly
11 sorry about my behavior at the last hearing, and you
12 will never see anything like that from me again in
13 your courtroom.

14 THE COURT: Thank you, Mr. Meyers.

15 MR. JEFFERSON: Your Honor, I am Dale
16 Jefferson, and I am here with my partner, Raul
17 Suazo. Pursuant to the Court's instruction last
18 time, that Mr. Radbil consider retaining independent
19 counsel, he took this Court's advice. So we have
20 been retained, not to represent the underlying
21 plaintiff, but for purposes of representing
22 Mr. Radbil for today's hearing.

23 THE COURT: Thank you very much,
24 Mr. Jefferson.

25 Mr. Suazo would, spell your last name?

1 MR. SUAZO: Suazo, S-U-A-Z-O.

2 THE COURT: I can't recall -- and I'm sure
3 I've gotten motions from you all -- but are you a
4 Dallas firm or outside of Dallas?

5 MR. JEFFERSON: We have -- our firm is
6 based in Houston. And although Mr. Suazo is from
7 Dallas, he had the good sense to move back to
8 Houston with me. So our firm is headquartered in
9 Houston, but we have about a nine-lawyer office here
10 in Dallas and about a ten-lawyer office in Austin,
11 as well.

12 THE COURT: That will be fine. Thank you
13 very much. And I see Mr. Radbil is here, as well.

14 Okay. Ms. Malone

15 MS. MALONE: Good morning, Your Honor.
16 Robbie Malone on behalf of Regional Adjustment
17 Bureau and my able associate, Xerxes Martin.

18 THE COURT: All right. The first thing I
19 wanted to do is just clarify the exhibits. I know
20 understandably we have more exhibits that are being
21 proposed to be offered, given the issues as we have
22 described them, kind of moving to maybe a larger
23 scope in the case. But I don't specifically recall,
24 other than what is attached to the original
25 briefing, that we actually have specific exhibits in

1 evidence. So why don't we clarify where we are and
2 what's being offered.

3 Ms. Malone, why don't we start with you.

4 MS. MALONE: Thank you, Your Honor.

5 At the last hearing, Your Honor, what we
6 had done is, just for ease of clarification for this
7 Court, we presented the Court with a notebook and
8 counsel, as well the witness, with Exhibits 1
9 through 14, which were specifically taken as
10 exhibits to our various motions.

11 What I have done today for the Court is, I
12 have incorporated them into one binder and continued
13 doing 15 through, I think it's 42, Your Honor. And
14 I do think we need to formally proffer 1 through 14,
15 just for clarification of the record, although we
16 talked about them ad nauseam at the last hearing.

17 So I just picked up numbering. And for
18 ease of the Court and everyone else, I just made one
19 binder so that the Court would have two from us.

20 THE COURT: Okay. That helps. I have
21 Mr. Radbil's exhibit list, and then I have some for
22 the firm as a whole. So Mr. Radbil's, I'm assuming,
23 are being handled by Mr. Jefferson.

24 MR. JEFFERSON: Yes, Your Honor.

25 Mr. Suazo and I will handle those, as well as

1 Mr. Radbil's objections to those proffered by the
2 other side.

3 THE COURT: Okay. What I am inclined to
4 do, ladies and gentlemen, is, the Rules of Evidence
5 typically don't apply to a sanctions hearing. They
6 can apply to a contempt, but this is not a contempt.

7 Obviously, even when the rules don't apply
8 pursuant to Rule 1101 of the Federal Rules of
9 Evidence, the Court certainly has to ensure that
10 there is some reliability and not issues that are so
11 loaded with hearsay that it can't possibly be fair
12 to offer them on the other side.

13 But having said that, it seems to me the
14 appropriate thing to do is to admit all of these
15 exhibits, hear what everyone has to say, and then
16 the Court can determine on its own how much weight,
17 if any, to assign to the exhibits so that we aren't
18 going back and forth with objections.

19 I note your objections for the record,
20 Ms. Malone, but I think that's a better use of our
21 time being that we are not dealing with a jury here.

22 So with regard to your exhibits, starting
23 first, you have 1 through -- what is it?

24 MS. MALONE: 42, Your Honor.

25 THE COURT: One through 42. I will let

1 you note your objection for the record, plaintiff's
2 side, but I'm inclined, as I am with your exhibits,
3 to admit those.

4 Mr. Jefferson?

5 MR. JEFFERSON: Your Honor, we're fine
6 with the Court's protocol.

7 THE COURT: Okay.

8 Mr. Meyers?

9 MR. MEYERS: We've noted our objections on
10 paper, but I agree with, Your Honor, as you wish.

11 THE COURT: All right. So Regional
12 Adjustment Bureau's Exhibits 1 through 42 are
13 admitted. Again, the Court will decide how much, if
14 any, weight to give each of those as I hear more of
15 the evidence in the hearing.

16 On the Radbil exhibit list, I have
17 Exhibits 1 through -- it looks like -- 34. Is that
18 right, Mr. Jefferson? Mr. Suazo?

19 MR. SUAZO: Yes.

20 THE COURT: And I note that there are some
21 objections, and you are not waiving those
22 objections, Ms. Malone, you continue to lodge the
23 objections you lodged in your filings, your Court
24 filings.

25 MS. MALONE: Yes, ma'am, I do.

1 THE COURT: Again, overruling those
2 objections, it doesn't mean that I will consider
3 these or how much I will consider these, but I think
4 under the circumstances it's appropriate to move the
5 case along by admitting Radbil's Exhibits 1 through
6 34 for the record in this case.

7 And then finally, we have the law firm
8 exhibits, which it looks like 1 through 31.

9 Is that what I have up here, Mr. Meyers?

10 MR. MEYERS: Yes, Your Honor.

11 THE COURT: Any others besides 1 through
12 31?

13 MR. MEYERS: Only the things that have
14 been filed, Your Honor, affidavits from the
15 different records keepers.

16 THE COURT: Right, and we discussed that a
17 little bit last time. I'm going to admit
18 plaintiff's exhibits, and that is going to be what
19 has been offered by Mr. Meyers on behalf of the law
20 firm, designated Plaintiff's 1 through 31 as part of
21 the record; again, with the same caveat as to how
22 much I will -- Ms. Malone?

23 MS. MALONE: Yes, Your Honor. There are
24 two problems -- not big ones -- and I think they are
25 easily solved.

1 In our conversation about objections with
2 Mr. Jefferson, I had agreed to remove a couple of
3 pages of one of my exhibits, and I would like to
4 honor that agreement, Your Honor, if I could. I
5 would be happy to correct the Court's copy and also
6 the witness copy, if you would like, on a break.
7 It's not going to be an issue for this morning.

8 THE COURT: Okay. Let's just make sure
9 you corrected the copies. And mine are up here if
10 you want to have our court security officer get them
11 for you.

12 MR. JEFFERSON: Thank you, Counsel.

13 MS. MALONE: You're welcome.

14 And the other issue, Your Honor, is with
15 regard to the Law Firm's Exhibit Number 22, which
16 was related to correspondence in the Boudreaux case.
17 We have a copy of the confidentiality agreement that
18 was in place with that.

19 I believe Mr. Meyers indicated to me that
20 he would be willing to redact the terms of the
21 settlement agreement out of those e-mails before
22 they were actually offered. We didn't anticipate
23 this when we were having that conversation.

24 If he would withdraw those, Your Honor,
25 then it would not -- redact those portions, it would

1 not violate the confidentiality agreement.

2 THE COURT: Agree with that, Mr. Meyers?

3 MR. MEYERS: Absolutely.

4 MR. JEFFERSON: No objection here.

5 THE COURT: We will just make sure that by
6 the end of the hearing or at a break or otherwise
7 that these adjustments are made.

8 All right. Anything else?

9 MS. MALONE: No, ma'am.

10 MR. MEYERS: Thank you, Your Honor.

11 THE COURT: All right. It's been a while.
12 I think it's been good we have had a break since the
13 last hearings with all that went on.

14 I think the question now is, where are we?
15 My recollection was that we began to put this off
16 for the future when Mr. Meyers became aware that
17 perhaps he needed to assess his situation and
18 acquire counsel, or at least get an idea of where he
19 might fit into this potential sanctions order. And
20 that was prompted, I think, by Ms. Malone's attempt
21 to call him to the witness stand.

22 So where are we, in your view? In my view
23 we still have some evidence to be offered, and
24 certainly Mr. Meyers is going to get a chance to
25 offer any evidence he wants, and Mr. Radbil as well.

1 Ms. Malone since we left with you, tell me
2 what your position is on where we go from here.

3 MS. MALONE: I believe I call Mr. Meyers
4 to the stand, Your Honor, and we proceed with
5 testimony.

6 THE COURT: Okay. All right.

7 Anyone else have anything to say on the
8 order of the proof?

9 MR. JEFFERSON: Your Honor, I -- the only
10 thing that I would -- that I would request from the
11 Court is that Ms. Malone and I have had an
12 opportunity to confer several times prior to today
13 to try to expedite the process. And I certainly
14 appreciate the Court's help with exhibits. We took
15 that upon ourselves to try to speed it up, so thank
16 you for that.

17 And I understand that it could very well
18 be that Mr. Meyers might be on the stand for quite a
19 long time, and that if that that's the case that
20 sadly we may not finish today. So I came prepared
21 with my calendar of open dates, to the extent that
22 we don't finish.

23 And I was just going to ask the Court if
24 we could work on an agreed date, to the extent that
25 we don't finish. My 25th wedding anniversary is

1 coming up, and I am taking my wife on a trip, and I
2 need to protect the interests of my client, but I
3 need to protect the interests of my wife.

4 THE COURT: Certainly the sanctions being
5 quite more severe on the family end --

6 MR. JEFFERSON: Since it's on the record,
7 I will note that you said it and not me, so I am
8 clearly not disagreeing.

9 THE COURT: All right. I am hoping that
10 we won't be carried over, but certainly I will work
11 with you if we are. I am hoping that we can move
12 this along, but I certainly want to give Mr. Meyers
13 a chance to say what he wants to say and the
14 questions asked that Ms. Malone wants to ask. So we
15 will work with you on that, I promise.

16 MR. JEFFERSON: Very good. Thank you,
17 Your Honor.

18 THE COURT: Mr. Meyers?

19 MR. MEYERS: I have a blank notebook here,
20 Your Honor, that I was hoping that I could take to
21 the stand with me.

22 THE COURT: Sure, absolutely.

23 MR. MEYERS: Thank you.

24 THE COURT: You ready?

25 MR. MEYERS: Yes.

1 THE COURT: Come on up.

2 MARSHALL MEYERS,

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 Q. (By Ms. Malone) Thank you, Mr. Meyers.

6 Just as a way of background, when we left last
7 time, I believe we were talking about that your firm
8 is essentially a national law firm and that it
9 practices across the country; is that correct?

10 MR. MEYERS: I would object to that
11 question on the grounds of relevance.

12 THE COURT: Overruled.

13 A. My firm practices in several states, yes.

14 Q. (By Mr. Meyers) Okay. And you are actually
15 now licensed in the Federal District Court in the
16 Northern District of Texas, correct?

17 A. Yes.

18 Q. And that's only been something that you did
19 recently; I think you had done it just a few days
20 before our last hearing, correct?

21 A. I believe that is correct.

22 Q. And as part of that, you committed to the Court
23 that you had read the Dondi decision, correct?

24 A. Yes, I did.

25 Q. And you have done that?

1 A. I have done that.

2 Q. And you have read the local rules?

3 A. Yes.

4 Q. And you know that the local rules do require
5 that you provide an address in the Northern District
6 or wherever you are going to be that is a legitimate
7 address for service for you, correct?

8 A. I'm not sure I understand the question, but I
9 do understand that I need to provide an address
10 where you can send me correspondence. And I further
11 understand that a satellite office where I am not
12 normally does not constitute an office.

13 Q. And you understand that pursuant to Local Rule
14 83.13 you have to keep that information accurate on
15 the Court's website, correct?

16 A. I believe you. I don't recall the rule, but
17 I'm aware that I must keep the information accurate.

18 Q. Okay. And we had talked last time that your
19 firm has filed since 2011 at least 467 lawsuits
20 across the country, correct?

21 A. I'm sure it's more than that.

22 Q. Okay. I meant in the year 2011, Mr. Meyers.
23 Is that correct?

24 A. I don't know the answer to that, but I have no
25 reason to disagree with you at the present time.

1 Q. And when we were looking specifically at.
2 Mr. Radbil, since 2010 he's filed some 86 lawsuits
3 in federal court in Texas, correct, as lead counsel?

4 A. I don't have that specific information, but I
5 have no reason to disagree with you at the present
6 time.

7 Q. Okay. And in fact, until I guess a little over
8 a week ago, on your firm website you listed
9 Mr. Radbil as the managing attorney for Texas,
10 correct?

11 A. I think that's correct.

12 Q. And now he's listed as Of Counsel, correct?

13 A. That is correct.

14 Q. And no other attorney on your website besides
15 Mr. Radbil actually held a State of Texas license;
16 is that correct?

17 A. That is correct.

18 Q. And in your briefing you indicated that you
19 believed it was appropriate for the partners at
20 Weisberg & Meyers to supervise Mr. Radbil, correct?

21 A. Yes.

22 Q. And you think that you provided a reasonable
23 hand of guidance involving Mr. Radbil in this case,
24 sir?

25 A. Given how displeased the Court is with what

1 occurred, I'm sure that I could have done a better
2 job.

3 Q. Okay. And if you would look with me at the
4 white notebook under Tab 13, which would be
5 Exhibit 13.

6 A. Yes.

7 Q. These are entries taken from your billing
8 records which reflect the partners in your firm who
9 billed on this particular file. Do you recall
10 those.

11 A. Do I recall?

12 Q. Do you recall that you made entries on this
13 file, sir?

14 A. Yes.

15 Q. Okay. And do you have reason to disagree that
16 you, Mr. Weisberg and Craig Ehrlich and Eric Radbil,
17 all partners in your firm at the time, made entries
18 and indicated they have reviewed some portion of
19 this case.

20 A. That's correct.

21 Q. You understand that there are certain
22 requirements under the Texas Disciplinary Rules for
23 supervision of an attorney, correct?

24 A. I'm sure.

25 Q. And you understand that the Texas attorney

1 creed, which has been adopted by the Northern
2 District in Dondi, as well as the Texas Bar
3 Association, also has requirements about being
4 honest with the Court, correct?

5 A. Yes.

6 Q. And there are requirements that you also have
7 to be honest with the general public, correct?

8 A. Yes.

9 Q. If you would look with me, sir, at
10 Exhibit Number 15. This is a motion for new trial
11 that was filed by Mr. Radbil in a case in Tarrant
12 County. Do you see that?

13 A. Yes.

14 Q. Would you turn with me to page 765, which would
15 be the last paragraph or the last section in that
16 motion.

17 A. I am here.

18 Q. Do you see here that Mr. Radbil is making a
19 motion to the Court indicating that he believes that
20 a counsel must exhaust their peremptory strikes
21 prior to the Court making rulings on motions for
22 cause on jurors?

23 A. Could you repeat that, please?

24 Q. Sure. If you need to read it, please do so,
25 sir.

1 Do you see from this particular section that
2 Mr. Radbil is making the argument that counsel must
3 exhaust their peremptory strikes prior to the Court
4 ruling on motion to cause strikes on particular
5 jurors?

6 A. Okay. I have read that.

7 Q. Okay. And that's essentially what he's saying,
8 is he not, Mr. Meyers?

9 A. I'm sorry, would you repeat the question one
10 last time?

11 Q. Sure. Would you agree with me that he is
12 arguing that the Court should have required the
13 peremptory strikes to be exhausted prior to making
14 rulings on motions for cause.

15 A. I think the pleading says what it says, but I
16 don't have a reason to disagree with what you are
17 saying.

18 Q. Okay. And that's not the way the jury
19 selection works, does it, Mr. Meyers?

20 A. I think the rules speak for themselves.

21 Q. I am asking you, sir, as a supervising
22 attorney, is that the way jury selection is supposed
23 to work?

24 THE COURT: What pages of the motion are
25 you referring to, Ms. Malone?

1 MS. MALONE: Your Honor, there is a big
2 number at the bottom, 765.

3 THE COURT: 765?

4 MS. MALONE: Yes, ma'am.

5 THE COURT: Okay. All right.

6 MS. MALONE: It's IX, Your Honor.

7 THE COURT: Okay.

8 A. I believe -- and I could be wrong -- that you
9 strike for cause and then you do peremptory
10 challenges.

11 Q. (By Ms. Malone) So as of September 2011, when
12 Mr. Radbil filed this motion, he at least did not
13 appear to understand the process for jury selection,
14 is that fair?

15 A. I can't say that.

16 Q. Did you read the transcript from the Brown
17 trial, sir?

18 A. I've read parts of it, yes, and I may have
19 fully read it on one occasion.

20 Q. Okay.

21 A. But it would have been a very long time ago.

22 Q. Okay. So as of 2011, Mr. Radbil filed a motion
23 that would indicate he didn't understand the jury
24 selection process in trial, correct?

25 MR. JEFFERSON: Your Honor, we will object

1 to the extent it asks him to speculate as to what
2 Mr. Radbil's state of mind was.

3 THE COURT: Sustained. I just think the
4 question is, very simply, if this was the argument
5 being made and if he agrees -- if Mr. Meyers agrees
6 that this would be a correct legal argument, and it
7 looks like that is the argument being made. So the
8 question is: Do you agree that this would be
9 incorrect?

10 THE WITNESS: I'm a little confused by the
11 questions back and forth, but I do agree and believe
12 that you would strike for cause and then exercise
13 peremptory challenges, if that's what's being asked.

14 THE COURT: All right.

15 Q. (By Ms. Malone) Thank you.

16 If you would look with me at Exhibit 16, sir.
17 If you would look at the top of this, it indicates
18 the filing date is October 31st of 2011, correct?

19 A. Yes.

20 Q. And this is a motion that is being made by
21 Nissan against -- in the Scarlott case, correct?

22 A. Yes.

23 Q. And do you see in the first paragraph that
24 Nissan is alleging that Mr. Radbil and his brother
25 and another attorney in your firm made material

1 misrepresentations to the Court?

2 A. Well, that is what the pleading says, yes.

3 Q. And it also indicates in this motion that
4 Nissan has found that Mr. Radbil and his brother and
5 another attorney have violated the terms of the
6 Texas Disciplinary Rules of Professional Conduct,
7 the Texas Lawyer's Creed, and the Federal Rules of
8 Civil Procedure. That's what the motion says in the
9 first paragraph, right?

10 A. That is what the motion says, yes.

11 Q. And on the next page at the beginning, in fact,
12 Nissan has asked the Court to sanction Mr. Radbil
13 and his brother and another attorney and your law
14 firm to deter them for future abuse of the justice
15 system, correct?

16 A. That is what the motion says.

17 Q. And if you read through this motion, it also
18 asks the Court to suspend them from practicing
19 before that court, before the Southern District of
20 Texas, correct?

21 A. That is what the motion says.

22 Q. And that is actually set for hearing tomorrow,
23 is it not?

24 A. That is correct.

25 Q. Did you, following this motion that you

1 received from -- or that your firm received in the
2 Scarlott case, did you have any communication with
3 the attorney from Nissan to find out if there was
4 any legitimacy to their concerns?

5 A. I have spoken with the attorney from Nissan,
6 but I do not think that I contacted him after the
7 filing of the motion. I don't recall doing so.

8 Q. Okay. Now, if we will look at Exhibit 17, sir.
9 Seventeen is a final judgment in the Lopez case; is
10 that correct?

11 A. Yes.

12 Q. And this was a case in which Mr. Radbil served
13 as lead counsel at trial.

14 A. Yes.

15 Q. And according to the information that was
16 provided in his deposition, Mr. Lopez indicated he
17 had not been advised of a settlement offer. Is that
18 correct, that's what the deposition said?

19 A. The deposition says that, correct.

20 Q. And in this case, Mr. Lopez wound up getting a
21 verdict or a judgment in the amount of \$42,500
22 against him, is that correct, sir?

23 A. That is what the document says, yes.

24 Q. And again, just so we are clear, this occurred
25 in January of 2012, correct? It's on the first

1 line, Mr. Meyers, of the judgment, the day of the --

2 A. Yes.

3 Q. And you would agree with me that that was more
4 than a year before the White trial, correct?

5 A. Yes.

6 Q. Again, did you have any communications with
7 Mr. Lopez to find out if he had any reason to be
8 concerned about not being advised of the settlement
9 offers?

10 A. I did speak with Mr. Lopez.

11 Q. Okay. At the time the judgment was filed?

12 A. I recall -- and again, this is a year and a
13 half ago, but I recall speaking with Mr. Lopez on
14 several occasions. I recall --

15 Q. Did Mr. Lopez indicate that he was happy with
16 his representation?

17 A. I don't recall Mr. Lopez making any comments
18 about the quality of his representation.

19 Q. Did you have any conversations with the
20 attorneys who represented the defendants in that
21 particular case?

22 A. Yes.

23 Q. Did you have any conversations with them about
24 the manner in which the trial was conducted?

25 A. I don't think our conversations were about

1 that.

2 Q. Were you aware that Mr. Radbil attempted to
3 recuse Judge Moye in that case?

4 A. Yes.

5 Q. Were you aware that he did so based upon a
6 campaign contribution?

7 A. Yes.

8 Q. Do you think that was appropriate?

9 A. Well, at the time I thought it was appropriate.
10 I'm not sure in hindsight that it was.

11 Q. In your briefing you indicated that you did not
12 believe that you had an obligation to relay
13 subsequent offers to a client if they told you they
14 were not interested in settlement at the beginning;
15 is that correct?

16 A. I don't recall that in the briefing. However,
17 I do recall thinking that if a client has given us a
18 bottom line authority and told us this is what he
19 wants, that if an offer did not cover his needs or a
20 client's needs, that we could reject it.

21 Q. Okay. Now, Mr. Meyers, if you would look with
22 me, please, to Tab Number 30, which are excerpts
23 from the Texas Rules of Disciplinary Conduct, I
24 would ask you, sir, to turn to page 10. There are
25 numbers at the bottom of it.

1 A. Yes. One moment, please.

2 Q. No problem.

3 A. Okay. I'm there.

4 Q. 1.02. Does it indicate that a lawyer shall
5 abide by a client's decision whether to accept an
6 offer of settlement of a matter except as otherwise
7 offered by law?

8 A. That is what it says, yes.

9 Q. And on the next page under Comment, does it say
10 that the client has ultimate authority to determine
11 the objectives to be served by legal representation,
12 correct?

13 A. Your question again, please?

14 Q. Sure. Does it indicate here that the client
15 has the ultimate authority to determine the
16 objectives to be served by legal representation?

17 A. Continuing within the limits imposed by law,
18 the lawyer's professional obligations, and the
19 agreed scope of representation, yes, it does.

20 Q. Fair enough. Thank you, Mr. Meyer -- Meyers, I
21 apologize. I had an employee whose last name was
22 Meyer and I slip with that, and I do apologize.

23 A. I am the last of the Meyers generation, so no
24 one is going to be offended.

25 Q. Let's talk about Exhibit 18, if you could look

1 with me, sir.

2 A. Yes.

3 Q. Exhibit 18 is the final judgment that was
4 entered into in the Whaley case; is that correct?

5 A. Yes.

6 Q. And the trial in this case, as indicated by the
7 first line, occurred on July the 10th of 2012.

8 A. Okay.

9 Q. That's what the first line says, doesn't it?

10 A. Yes.

11 Q. You would agree with me, sir, that the ultimate
12 finding in this case resulted in a verdict in excess
13 of \$90,000 against Ms. Whaley.

14 A. Not having done the math, I take your word for
15 it. But I do see that there is a judgment against
16 her, yes.

17 Q. You agree with me 5,490 plus 85,000 is north of
18 90,000, just rounding it up.

19 A. Yes.

20 Q. And you would agree with me, sir -- we have
21 talked about this with Mr. Radbil -- that under the
22 original verdict, that the 5,490 was awarded in
23 favor of the company, and Ms. Whaley's amount was
24 \$650, as indicated by the Court's judgment.

25 A. We talked about that?

1 Q. No, we did with Mr. Radbil at the last hearing,
2 sir. You and I haven't spoken about it yet.

3 A. Okay. Then I'm not sure of your question.

4 Q. You know what? That's fair, Mr. Meyers.

5 Will you agree with me, if you read paragraph
6 number 2, that the initial verdict in favor of the
7 defendant from the jury was for \$6,140, and
8 plaintiff was awarded \$650, leaving the defendant
9 with a net recovery of \$5,490.

10 A. Yes.

11 Q. So that was in favor of the defendant, correct?

12 A. There was a verdict in favor of both parties,
13 and the net recovery was more to the defendant than
14 the plaintiff, short of attorney's fees if that's
15 what you are asking.

16 Q. Yes, I am asking you that.

17 And you would agree with me, sir, that on your
18 website, however, you listed this Whaley case as a
19 notable victory on behalf of Mr. Radbil, correct?

20 A. Yes, there was a time when that was listed on
21 the website.

22 Q. Sure; until about a week ago.

23 A. I'm not sure, but I will take your word for it.

24 Q. In fact, you sent out a news press release, a
25 paid submission, indicating that that was a trial

1 victory, correct?

2 A. Yes.

3 Q. Okay. And if you would look with me at
4 Exhibit 19, which is continuing with the Whaley
5 case, on page 2 -- this is a motion filed by your
6 firm, correct, sir?

7 A. Yes.

8 Q. Okay. Signed electronically by Mr. Radbil.

9 A. Okay.

10 Q. Okay. And in Paragraph Number 8 it indicates
11 that -- that the -- that you are withdrawing because
12 Ms. Whaley will not agree to pay the costs of the
13 appellate record; is that correct?

14 A. Could you repeat your question, please?

15 Q. Will you agree with me in paragraph 8 that
16 there is an indication that you are withdrawing as
17 attorney of record, or the firm is, because
18 Ms. Whaley is reluctant or refuses to bear the cost
19 of the appellate record?

20 I am paraphrasing, Mr. Meyers.

21 A. Well, it says she's failed to communicate with
22 her counsel for weeks. And above says that she's
23 dealing with family issues rendering her no time to
24 speak with us. So I think there were several
25 reasons why we felt compelled to withdraw.

1 Q. And continuing on you say: Without her
2 agreement to pay the cost of the record on appeal,
3 continued representation would be financially
4 burdensome; correct?

5 A. The motion says that, yes.

6 Q. Yes. In that case, are you aware, Mr. Meyers,
7 that an offer of \$7,000 and forgiveness of
8 Ms. Whaley's debt was made to Mr. Radbil?

9 A. I don't recall that as we sit here today, but
10 that is not to say it is not true, and it's not to
11 say that I wasn't aware of it at a time. As we sit
12 here today, I do not have a recollection of
13 settlement negotiations.

14 Q. And do you know that Ms. Whaley indicated to
15 Judge Hoffman that she was not aware of that offer?

16 A. I believe you have said that, yes.

17 Q. All right. Now let's talk a little bit about
18 this particular trial. Mr. Meyers, do you believe
19 that it is important to follow rules regarding
20 scheduling orders and following up with exhibits?

21 THE COURT: Back up just a minute on that
22 7,000. Was that to her or was it 7,000 she would
23 give them and it would all go away.

24 MS. MALONE: It would have been -- I'm
25 sorry, Your Honor. It would have been 7,000 paid to

1 her and her law firm to decide how to distribute,
2 and they would forgive the 6,000-dollar debt.

3 THE COURT: Thank you.

4 MS. MALONE: So instead, she got a
5 90,000-dollar judgment against her.

6 Q. (By Ms. Malone) Now, you believe it's
7 important to follow the rules with regard to meeting
8 exhibits and doing deadlines along the way?

9 A. I do.

10 Q. Okay. And I apologize to you, Mr. Meyers,
11 because this is not an exhibit, but in this
12 particular case -- and I will tell you where it can
13 be found, Document Number 70 -- your firm proposed
14 exhibit exchanges in this case. And if you would
15 like to have a copy, I would be happy to show it to
16 you.

17 Do you recall that there was a time when your
18 firm was asked, pursuant to the Court's order, to
19 give proposals of remaining deadlines?

20 A. In this case?

21 Q. Yes.

22 A. I don't have a specific recollection of that,
23 but I'm sure it is true.

24 Q. Okay. And if Court Document Number 70
25 indicates that your firm proposed that you would

1 exchange exhibits with opposing counsel on
2 February 15th, do you have reason to disagree with
3 that, sir?

4 A. I don't.

5 Q. And if it also indicates that your firm
6 proposed that there would be a deadline to submit
7 exhibits to the Court on February 20th, do you have
8 reason to disagree with that?

9 A. I don't.

10 Q. And just to wrap this up: On Document Number
11 71, Judge Boyle, in an order, adopted the deadlines
12 proposed by your firm.

13 Do you have reason to disagree with that?

14 A. I don't.

15 Q. Okay. I would like for you to look with me --
16 you have Mr. Radbil's exhibits up there.

17 A. I do. I do, yes.

18 Q. Exhibit Number 15, please. Now, recall that
19 the order said that exhibits should be given to
20 opposing counsel or exchanged among attorneys on
21 February the 15th, right?

22 A. That is what you said, yes.

23 MS. MALONE: Your Honor, may I give it to
24 him so he can have it?

25 THE COURT: You may.

1 Q. (By Ms. Malone) I don't want you to have any
2 doubt in your mind, Mr. Meyers.

3 A. Thank you.

4 Q. You're welcome.

5 Do you see that, the February 15th date? Do
6 you see it, sir?

7 A. Yes.

8 Q. Okay. Under Exhibit 15 for Mr. Radbil,
9 Mr. Radbil's firm -- counsel has produced exhibits
10 that were exchanged involving -- you know what? I
11 completely apologize to you. I gave you the wrong
12 exhibit number. I wrote down the wrong one, and I
13 apologize. Let me tell you which one it is. I
14 believe it's Exhibit Number 14. I was one off.
15 That would probably make it make more sense. Are
16 you with me, Exhibit 14, sir, is some e-mails
17 exchanged between your office and myself?

18 A. Exhibit 14?

19 Q. Yes, sir.

20 A. Yes. I'm sorry, Exhibit 14 I'm looking at.

21 Q. Would you agree with me, sir, that the e-mail,
22 Cathy Bopp, is one of your assistants?

23 A. She's a paralegal, yes.

24 Q. It indicates on Tuesday, February the 19th,
25 that they were still attempting to give exhibits to

1 me; is that correct?

2 A. The e-mail indicates that, yes.

3 Q. So that's four days after the deadline to
4 exchange exhibits, correct?

5 A. That is correct.

6 Q. Okay. If you would look with me at
7 Exhibit Number 13, it should be a FedEx document.

8 A. Yes.

9 Q. Okay. According to the scheduling order,
10 exhibits to the Court should have been provided to
11 the Court by February 20th, correct?

12 A. That is correct.

13 Q. And the FedEx package and the print-off
14 indicates that it was mailed from Houston on
15 February 21st with a scheduled delivery to the Court
16 on February 22nd.

17 A. That is correct.

18 Q. And that would be beyond the deadlines
19 scheduled with the Court, correct?

20 A. Yes. And this is one of the areas that I
21 mentioned to you, that I could have done a better
22 job of helping.

23 Q. All right. There have been other problems
24 with -- let's look at Exhibit Number 20, please,
25 Mr. Meyers.

1 A. Okay.

2 Q. This is a case from Seattle Washington, Paris
3 v. Steinberg.

4 I'm sorry Mr. Meyers, in my exhibit book, I
5 apologize to you.

6 A. Sure. Yes.

7 Q. Okay. And on this form there is a show cause
8 order of why the Court should not impose Rule 11
9 sanctions, correct?

10 A. Yes.

11 Q. And part of the indication from this record, if
12 you read through it on the next page, beginning on
13 page 2, that Mr. Trigsted presented an address that
14 appeared -- that was impossible to place on a map,
15 correct?

16 A. That is what the order says yes.

17 Q. And in the next paragraph, the Court found that
18 this was the third application for pro hac on behalf
19 of Noah Radbil, and the Court finds that it again
20 fails for misrepresenting information to the Court,
21 correct?

22 A. That is what it says, yes.

23 Q. And also there is a concern that an incorrect
24 bar number is provided?

25 A. That is correct.

1 Q. And an address that's inconsistent with that
2 provided to the Court, correct?

3 A. That is correct.

4 Q. All right. Exhibit Number 21, sir.

5 This is from the Ivy Little-Cadman case, again
6 from the State of Washington.

7 A. Yes, these orders are back to back. Yes, I see
8 those.

9 Q. And there is another show cause order involving
10 Rule 11 sanctions, correct?

11 A. Yes.

12 Q. And again, similar problems are addressed here
13 about addresses not constituting offices, correct?

14 A. Yes.

15 Q. And the Court is concerned and states that they
16 were looking at whether or not they should be
17 sanctioned for misrepresentations to the Court.

18 A. That is what the order says, yes.

19 Q. Thank you.

20 Exhibit Number 22 is an order from Judge Hoyt,
21 correct?

22 A. Yes.

23 Q. Judge Hoyt is in the Southern District of
24 Texas.

25 A. Yes.

1 Q. And you are aware that Mr. Radbil was the
2 attorney of record on this case?

3 A. That seems likely.

4 Q. All right. And if you would just look at the
5 last page of the order signed by Judge Hoyt on the
6 26th day of April, 2011.

7 A. Yes.

8 Q. Not to beat a dead horse, but two years before
9 this trial, correct?

10 A. Yes.

11 Q. And Judge Hoyt says: The Court admonishes the
12 plaintiff's attorney that it will not permit such
13 petty gamesmanship in the future. Correct?

14 A. That is what the order says, yes.

15 Q. Did you have any discussions with Mr. Radbil
16 following the issuance of this order about the way
17 in which he may have offended Judge Hoyt?

18 A. I think it was likely after seeing a footnote
19 like that, that we discussed it internally within
20 our firm, but I do not recall specifically.

21 Q. And part of the concern here was that
22 Mr. Radbil was arguing that an offer of judgment
23 should have been sent by certified mail and not
24 faxed to the opposing side, correct?

25 A. I don't know the answer to that.

1 Q. Okay. If you want to skim the order, feel free
2 to, Mr. Meyers. I'm not trying to trick you. I
3 want to make sure you understand it.

4 A. Yes, if I may have a moment.

5 Q. Sure.

6 (Pause in the proceedings.)

7 A. I see where it says that, yes.

8 Q. Okay. And in fact, following that, recently in
9 the Payne case, Mr. Radbil made that exact same
10 argument against my firm even though we had both
11 faxed and sent it by certified mail.

12 Do you recall that, Mr. Meyers?

13 A. I don't, but I believe you.

14 THE COURT: Payne case being where?

15 MS. MALONE: Your Honor, it's in Judge
16 Means' Court. I apologize.

17 THE COURT: Okay.

18 A. I believe you.

19 Q. (By Ms. Malone) And that case is actually on
20 appeal with the Fifth Circuit, correct?

21 A. I believe it is, yes.

22 Q. So the thing that Judge Hoyt considered to be
23 petty gamesmanship continued to be an argument by
24 Mr. Radbil, correct?

25 A. I'm not sure, but I have no reason to disagree

1 with what you are saying. And I would simply rely
2 on the rules for the proper way to do it.

3 Q. Okay. If you would turn with me to Exhibit 23.
4 We are now going away from Mr. Radbil, talking about
5 partners in your firm.

6 A. Yes.

7 Q. Okay. Exhibit Number 23 is an order issued by
8 the District of Colorado involving your client,
9 Alyssa Danielson-Holland; is that correct?

10 A. Yes.

11 Q. In this case, the Court found sanctions -- if
12 you would turn to page 3 of the order -- against
13 your partner, Craig Ehrlich, who was your partner at
14 the time, correct?

15 A. That is correct.

16 Q. And I understood that you told the Court he no
17 longer is, to be fair?

18 A. That is correct.

19 Q. In this case, on page 3, the Court wrote: It
20 is apparent that Craig Ehrlich as plaintiff's
21 counsel elected to proceed to trial without
22 plausible evidence to support the claim made. He is
23 therefore responsible for the defendant's attorney's
24 fees for legal services subsequent to the entry of
25 summary judgment. Is that correct?

1 A. The order says that, yes.

2 Q. And it's not just Judge Matsch who made that
3 ruling, if you will turn with me to Exhibit Number
4 24 -- are you there?

5 A. Yes.

6 Q. The 10th Circuit for the United States Court of
7 Appeals affirmed Judge Matsch's ruling, correct?

8 A. Yes.

9 Q. And on page 5 of that order, the Court wrote
10 that: Although Ms. Danielson-Holland's deposition
11 testimony persuaded the magistrate judge and the
12 district court that the abusive-language claim
13 should proceed, Mr. Ehrlich should have realized
14 upon careful continual re-evaluation of the claim as
15 he prepared for trial that he lacked evidence,
16 particularly telephone records, supporting her
17 assertion and testimony. Correct?

18 A. That is what the order says, yes.

19 Q. It's an opinion, correct?

20 A. Yes. I'm sorry.

21 Q. That's fine. I just want to make sure you and
22 I are looking at the same thing.

23 A. Yes.

24 Q. On page 6, the 10th Circuit found: Mr. Ehrlich
25 therefore either failed to properly prepare for

1 trial or the evidence did not exist to establish the
2 call occurred. Is that correct?

3 A. That is what the opinion says.

4 Q. And Mr. Ehrlich is one of the individuals who
5 billed on the White file as working with Mr. Radbil
6 in preparation for trial, correct?

7 A. Yes.

8 Q. And I believe Mr. Radbil testified at the last
9 hearing that he spoke with both you, his brother,
10 and Mr. Ehrlich about how to prepare to trial,
11 correct?

12 A. I believe that to be true.

13 Q. All right. If you would look with me at
14 Exhibit Number 25 --

15 A. Yes.

16 Q. -- this is the case of Barchard v. Kass,
17 Shuler, Solomon, Spector, Foyle & Singer, correct?

18 A. Yes.

19 Q. And to shorthand it, this is a sanction order
20 issued against your current partner, Alex Weisberg,
21 correct?

22 A. And our client, yes.

23 Q. And your founding partner, correct?

24 A. Yes.

25 Q. Okay. If you would look with me on page 3 of

1 that order, you will find that the judge found that
2 there was a violation for filing under the Bad Faith
3 Section, 1692(k) -- can we shorthand that,
4 Mr. Meyers?

5 A. The order says that, yes.

6 Q. And it said that the plaintiff's attorneys knew
7 or should have known raised no justiciable issue of
8 law or fact, and that was filed in bad faith and
9 solely for the purposes of harassment. Correct?

10 A. The order says that, yes.

11 Q. And they awarded \$56,000 to Kass, Shuler,
12 correct?

13 A. Yes.

14 Q. And you appealed that case, right?

15 A. Yes.

16 Q. And it got appealed again, right?

17 A. We prevailed on appeal. And then they appealed
18 and they prevailed on appeal for a lack of evidence,
19 correct.

20 Q. Right. And in this case --

21 A. And we have petitioned for cert as well.

22 Q. All right. Under Exhibit Number 26, we have
23 the District Court of Appeal for Florida finding on
24 August of 2013 -- I'm sorry, the opinion was filed
25 on August 2013, correct?

1 A. Yes.

2 Q. And the ultimate finding, if you will look on
3 page 3 of that order, the Court affirmed the
4 original trial court's finding of bad faith.

5 A. Yes. The Court says that the circuit court was
6 obliged to affirm the county court's judgment but
7 only in part, as we will explain, because the record
8 brought forward by Barchard was inadequate to
9 demonstrate reversible error, yes.

10 Q. Okay. Look with me please, sir, at
11 Exhibit Number 27.

12 A. Yes.

13 Q. This is a case out of Stovall -- this case is
14 styled Stovall v. MSR BPO out of the federal court
15 in Florida, correct?

16 A. Yes.

17 Q. And again, this is a case involving founding
18 partner Mr. Weisberg?

19 A. Yes.

20 Q. Whose name appears in the billing records of
21 this file, as well, correct?

22 A. Yes.

23 Q. In this case, there is an allegation by the
24 opposing side on page 2 that Mr. Weisberg
25 participated in discovery abuse; that he made

1 misrepresentations to the Court in his opening
2 statement; and that he suborned perjury from his
3 client. Correct?

4 A. That is what the motion alleges, yes.

5 Q. All right. If you would, please, flip with me
6 to Exhibit Number 42.

7 A. Yes.

8 Q. There has been a recent ruling by the
9 magistrate in this case, correct?

10 A. Yes.

11 Q. And there was, in fact, an evidentiary hearing
12 like this in that case, correct?

13 A. I'm not sure it was quite like this, but there
14 was an evidentiary hearing, yes.

15 Q. Okay. According to the magistrate ruling,
16 beginning on page 13, in the opening section it
17 says: To the extent that Weisberg had reason to
18 know the 2010 assertions related to activity by
19 another entity prior to MRS involvement and then
20 prompted Stovall to testify to the activity as
21 happening in 2011 rather than 2010, he knowingly and
22 recklessly pursued which claims which clearly would
23 have been foreclosed and it unreasonably prolonged
24 the litigation of the harassment counts.

25 Is that correct?

1 A. That is what the order says.

2 Q. And on page 15 --

3 A. Yes.

4 Q. -- in the first full paragraph, Mr. White --
5 the Court is reciting Mr. Weisberg's argument.

6 THE COURT: Are we on 42?

7 MS. MALONE: Still on Exhibit 42, Your
8 Honor, on page 15.

9 THE COURT: Thanks.

10 Q. (By Ms. Malone) Are you with me? Mr. Meyers.

11 A. I am; I'm with you.

12 Q. Just making sure.

13 In the first full paragraph on that page it
14 indicates: Weisberg maintains that nobody at his
15 firm encouraged, suggested, participated in, or was
16 aware of plaintiff's removal of information from the
17 first version of the telephone log spreadsheet.
18 Instead, this caught them by surprise.

19 Is that correct?

20 A. That is what the order says, yes.

21 Q. That is what Mr. Weisberg argued, is it not?

22 A. I have to rely on the order to know that, so I
23 assume that is what he argued because it's quoted in
24 the order.

25 Q. Blamed it on the client.

1 A. I believe that the Court found the client to be
2 dishonest.

3 Q. He also found Mr. Weisberg to have acted
4 involved. On page 17, last paragraph it begins:
5 Mr. Weisberg, as lead counsel and a supervisor of
6 his associate, Mr. Sullivan -- Mr. Sullivan is still
7 an associate with your firm?

8 A. Yes.

9 Q. -- was without reasonable excuse in passing on
10 the altered versions of the telephone log
11 spreadsheets to MRS even though certain numbers had
12 been clearly omitted without further examination or
13 notation. Even at this juncture, posttrial,
14 Mr. Weisberg refuses to admit that one of the
15 telephone log spreadsheets omitted Stovall's calls
16 to his firm.

17 Have I read that correctly, sir?

18 A. You have read it correctly, yes.

19 Q. Continuing on, skip down a little bit, it says:
20 Particularly in light of Mr. Sullivan's
21 representations to this Court in his declaration on
22 this issue, that appear designed to mislead or
23 obscure the extent of Stovall's redactions, the
24 Court finds Mr. Weisberg and Mr. Sullivan's actions
25 to be sanctionable.

1 Have I read that correctly?

2 A. You have.

3 Q. Okay. And on page 22 of the same order, the
4 Court goes on to say: Mr. Weisberg's denial of
5 knowledge of the 281 telephone number being on
6 Stovall Grand Asian Travel Website because it was
7 not provided to him by the Court or defendant is a
8 completely unreasonable position, warranting
9 sanctions.

10 Is that correct?

11 A. That is what the order says, yes.

12 Q. On the last page it indicates that the Court
13 found a punitive damage of \$15,000 directly against
14 Mr. Weisberg for his own conduct and as supervisor
15 of Mr. Sullivan, correct?

16 A. That is correct.

17 Q. And a separate finding of \$15,000 against the
18 client, Mr. Stovall, correct?

19 A. That is correct.

20 Q. Now, in your affidavits to the Court, you
21 indicate to the Court that no attorney has ever been
22 disciplined while at your firm. Is that correct,
23 Mr. Meyers?

24 A. That is correct.

25 Q. You don't consider federal sanctions to be

1 disciplinary actions?

2 A. You know, I think that that was probably poor
3 phrasing. I meant by a bar, but yes, I do consider
4 federal sanctions to be discipline.

5 THE COURT: Ms. Malone, when you say, "the
6 affidavit," I know we have talked about that before,
7 but what exhibit is it and where is it located so
8 the record is clear?

9 MS. MALONE: Your Honor, it was his
10 original affidavit that he filed on the last
11 hearing, and he didn't reurge it. But I will be
12 happy to -- Mr. Martin will make a note and get you
13 the exhibit number.

14 THE COURT: I believe it was filed right
15 on the day of or after August the 6th or 7th.

16 MS. MALONE: Yes, Your Honor, that's the
17 one I was thinking of.

18 THE WITNESS: I think, Your Honor, that I
19 said that in an October 2nd affidavit that I filed,
20 although it may be also in a different affidavit.

21 THE COURT: Okay.

22 THE WITNESS: But I don't have a
23 recollection. Could I beg the Court for a
24 five-minute bathroom break.

25 THE COURT: Yes, that's fine. We will

1 take a five-minute bathroom break.

2 THE WITNESS: Thank you.

3 (Recess taken.)

4 MR. JEFFERSON: Your Honor, I understand
5 potential witness has entered, so we need to invoke
6 the rule.

7 THE COURT: The witness is?

8 MS. MALONE: It would be Mr. Patterson,
9 Your Honor. I will withdraw him from the witness
10 list. I'm not going to call him.

11 THE COURT: Do you plan to call him?

12 MR. JEFFERSON: He is not on our witness
13 list, I do not believe.

14 THE COURT: And if Ms. Malone is not going
15 to call him, essentially by doing this she's
16 forfeited a chance to call him, and she's agreed to
17 that.

18 MS. MALONE: I don't need him anymore.
19 Mr. Meyers gave me the testimony I wanted.

20 THE COURT: All right. Everybody all
21 right with that? Certainly the Rule is invoked,
22 which means that witnesses have to stay outside. It
23 also means that no one, witness or not, can talk
24 about the testimony with anyone else other than the
25 lawyers in the case, so as long as that is clear to

1 everyone.

2 MR. JEFFERSON: Okay. Thank you, Your
3 Honor.

4 MS. MALONE: Obviously, with the
5 exception, if he's invoking the Rule, Mr. Martin and
6 I are both on the witness list.

7 THE COURT: That's fine. You are
8 representative of the parties, that's an exception.

9 MS. MALONE: Thank you, Your Honor. I did
10 two bits of housekeeping for you.

11 One, you asked me -- we talked about the
12 cite for Payne v. Progressive Financial Service.
13 It's in the Northern District of Texas, Cause Number
14 13-10381. That is in Judge Means' court.

15 The item we were talking about was in
16 their response to our motion to dismiss. I
17 apologize to the Court, we weren't able to get a
18 document number on our phones in the courtroom.

19 THE COURT: Okay.

20 MS. MALONE: And the --

21 THE COURT: Affidavit.

22 MS. MALONE: Regarding the affidavit, Your
23 Honor, is, in fact, document 158, which was the
24 affidavit filed by Mr. Meyers on the 2nd. The
25 referenced testimony was on page 4 in footnote 2.

1 Approximately two-thirds down in the middle of the
2 page he says: And I can absolutely, positively tell
3 this Court that no attorney at Weisberg & Meyers has
4 ever been disciplined while at this firm.

5 THE COURT: All right. Thank you.

6 Q. (By Ms. Malone) Continuing with Exhibit Number
7 28, Mr. Meyers.

8 A. Yes.

9 Q. And this is the case of Saunders v. NCO
10 Financial System against your firm in New York.

11 A. Yes.

12 Q. And in this case the Court in the first
13 paragraph indicates that she is requiring plaintiff
14 and his attorney to show cause why monetary
15 sanctions should not be imposed under Rule 11,
16 correct?

17 A. Judge Cogan did, yes.

18 Q. And continuing on page 5 of the opinion, under
19 IV. Rule 11 considerations in the second paragraph,
20 the judge wrote: I have a serious concern that this
21 lawsuit reflects an attempt by plaintiff and/or his
22 attorney to manipulate the law for an improper
23 purpose. The record before me clearly raises an
24 issue as to whether plaintiff deliberately misled
25 NCO for the purpose of creating a claim against it

1 under the FDCPA and the TCPA that could be settled
2 for nuisance value plus attorney's fees.

3 Have I read that correctly?

4 A. Yes.

5 THE COURT: And the exhibit you were
6 reading from, Ms. Malone?

7 MS. MALONE: It's Exhibit 28, Your Honor.

8 THE COURT: All right. 28, I didn't have
9 that.

10 Q. (By Ms. Malone) And then on page 6 of that
11 same opinion in the second paragraph above the
12 conclusion, the Court writes: I have serious doubts
13 as to whether the arguments that the plaintiff's
14 attorneys have advanced have been made in good
15 faith. In light of plaintiff's repeated failures to
16 disclose that he was PLS of Maryland.

17 Have I read that correctly, sir?

18 A. Yes.

19 Q. You appeared for a show cause hearing in that
20 case.

21 A. I did.

22 Q. And the judge decided not to grant sanctions.

23 A. That is correct.

24 Q. Right. Let's go to Exhibit Number 29. This is
25 the Allison v. Michael J. Scott, PC, case out of the

1 Southern District of Houston.

2 A. Yes.

3 Q. And this is one of your clients.

4 A. Yes.

5 Q. Okay. And in this case, if you will look,

6 there is a filing of a Notice of Settlement on

7 behalf of your firm -- on behalf of Mr. Allison

8 signed by a partner at your firm, correct?

9 A. It is a Notice of Settlement, but Mr. Kurz was
10 never a partner.

11 Q. I apologize, sir.

12 A. No problem.

13 Q. Okay. But you list him as one of the higher
14 attorneys in your firm because you billed him at a
15 higher rate.

16 A. When he was with the firm, yes, he was a higher
17 attorney.

18 Q. And was there a settlement in this case,
19 Mr. Meyers?

20 A. Well, I had a chance to look at the file this
21 morning. And Mr. Scott sent us a letter that was
22 dated May 24th; said on the letter for delivery
23 May 30th, but that was transmitted to us via e-mail
24 May 29th. And of course I'm going back reviewing
25 the file for my recollection. And that letter said:

1 Here's -- I have enclosed -- and I paraphrase: I
2 have enclosed a 100-dollar check. I think your
3 proposed amendment is frivolous, and that was about
4 it. So I believe it was a settlement. I understand
5 that Mr. Scott may feel otherwise. I'm not sure
6 what the answer is.

7 Q. And if Mr. Scott, who is my client, were to
8 come forward and testify that there was no
9 settlement, that this Notice of Settlement was to
10 avoid a hearing, if you will look on the first page
11 of that exhibit on May 31, 2012, do you have any
12 reason to dispute that?

13 MR. JEFFERSON: Your Honor, that calls for
14 speculation as to what her client might testify
15 about.

16 THE COURT: Well, only if you can answer
17 without speculating. I'm not sure that you can, but
18 ask the question again.

19 MS. MALONE: I will try.

20 Q. (By Ms. Malone) There was a hearing --
21 according to this document, there was a Notice of
22 Setting for May the 31st, 2012, correct, on the
23 first page, Mr. Meyers?

24 A. Yes.

25 Q. And this Notice of Settlement was filed the day

1 before that hearing.

2 A. Yes.

3 Q. And the Order of Dismissal was subsequently
4 issued the day of the hearing, correct?

5 A. Yes.

6 Q. Did Mr. Allison receive \$100 from your firm?

7 A. Yes.

8 Q. Did you sign any sort of settlement agreements
9 with Mr. Scott?

10 A. I don't believe that his letter included a
11 release. I do know that we did not recover any fees
12 and waived our costs, as well.

13 Q. Did you sign any settlement agreements with
14 Mr. Scott?

15 A. I didn't sign anything, but I don't believe so.
16 If Mr. Scott says we did, then I would believe him.

17 Q. If Mr. Scott says there was no settlement
18 agreement signed, would that be accurate with your
19 recollection?

20 A. I would have no reason to dispute that at the
21 present time.

22 Q. Okay. Exhibit Number 4 is an example of a
23 class action of an order involving class
24 certification. Are you with me?

25 A. I see that. Yes.

1 Q. And if you will look with me on page 7 of the
2 order -- of the order, there is a reference by the
3 Court that the evidence provided to the Court as to
4 the qualifications for the firm to be class counsel
5 comes from the firm resume and the firm website.

6 That's typically what you guys do, correct?
7 You use your files that are on your firm website,
8 correct?

9 A. I don't have any reason to dispute that at the
10 present time. I'm sure we rely on more than that,
11 but I'm not certain exactly what we do at this time.

12 Q. All right. If you look with me at Exhibit 31,
13 sir.

14 A. Yes.

15 Q. This is the biography from your website of
16 Mr. Aaron Radbil, Mr. Radbil's brother; is that
17 correct?

18 A. It appears to be, yes.

19 Q. Under Notable Trial Victories next to his
20 photograph, do you see where it says: A Texas
21 federal jury awarded a consumer 121,000 in damages
22 for a debt collector's violation --

23 THE COURT REPORTER: Excuse me. Can you
24 please start that over again.

25 Q. (By Ms. Malone) Does it say: A Texas federal

1 jury awarded a consumer 121,000 in damages for a
2 debt collector's violation of -- and can I -- can I
3 agree that I haven't read all of the statutes and
4 just stop there, because that's the main part?

5 A. Yes.

6 Q. Okay. And is that accurate?

7 A. I can see how it is accurate, and I can see how
8 it is less than accurate.

9 Q. Following on that same page under the
10 Fifth Circuit Court of Appeals, there's an entry for
11 Mr. Radbil saying: The United States Court of
12 Appeals for the Fifth Circuit reversed the district
13 court's ruling granting a debt collector's
14 post-trial motions for judgment as a matter of
15 law -- correct -- to alter or amend the verdict, and
16 for a new trial, and remanded the case to the
17 district court to enter judgment in the consumer's
18 favor.

19 A. I think you read that correctly.

20 Q. In fact, if you look at Exhibit Number 32, the
21 amount -- the last page of the opinion from the
22 Fifth Circuit on page 13, is that they are going to
23 enter a judgment in the amount of \$4,500 to
24 Ms. Guajardo correct?

25 A. Yes.

1 Q. Mr. Meyers, you are familiar with the Rules
2 of -- under the Texas Rules of Disciplinary --
3 sorry, the Texas Rules of Professional Conduct about
4 how you advertise and don't advertise, are you not?

5 A. I am familiar, yes.

6 Q. And I have some of the excerpts, if you will
7 look under Tab 30 on page 92, Rule 7.02.

8 A. Yes.

9 Q. It says that: A lawyer shall not make or
10 sponsor a false or misleading communication about
11 the qualifications or the services of any lawyer or
12 firm. A communication is false or misleading if it:
13 One, contains a material representation of fact or
14 law -- I'm sorry, material misrepresentation of fact
15 or law or omits a fact necessary to make the
16 statement considered as a whole not materially
17 misleading. Correct?

18 A. It does say that.

19 Q. It also talks about a communication being false
20 or misleading if it contains any reference in a
21 public media advertisement to past successes or
22 results obtained unless the amount involved was
23 actually received by the client. Is that correct?

24 A. Yes.

25 Q. All right. Let's go back to Mr. Radbil's

1 form -- I'm sorry, biography, I called it the wrong
2 thing. If you will look under Notable Class
3 Actions.

4 MR. JEFFERSON: I'm sorry, there are two
5 Mr. Radbil's.

6 MS. MALONE: Aaron Radbil, Exhibit 31. I
7 apologize, Counsel.

8 MR. JEFFERSON: Okay.

9 Q. (By Ms. Malone) We are at Exhibit 31.

10 A. Yes.

11 Q. If you will go to page 3 of 4 under Notable
12 Class Actions, sir.

13 A. Yes.

14 Q. It says: A prospective class of individuals
15 alleged that Southwest Airlines flew 46 Boeing 737s
16 on more than 60,000 flights in violation of federal
17 air-safety regulations governing the maintenance and
18 operation of aircraft. Correct?

19 A. It does say that.

20 Q. And this is touting Mr. Aaron Radbil, who is
21 your partier, right?

22 A. At the present time, yes.

23 Q. And this is touting his skill set on your
24 website, correct?

25 A. Yes.

1 Q. All right. If you will look with me at
2 Exhibit 34, this would be the Beason case, correct?

3 A. That is what it says.

4 Q. And it indicates: A notice of voluntary
5 dismissal -- this was done prior to a class being
6 certified, was it not?

7 A. I know nothing about this case. This is not a
8 case with my law firm.

9 Q. It's not with your law firm?

10 A. No.

11 Q. If you look on the next page it indicates it
12 was actually done by Krohn & Moss, correct?

13 A. It does.

14 Q. On the next page?

15 A. Yes.

16 Q. Oh, I'm sorry. I thought you asked me a
17 question. I apologize, Mr. Meyers. I thought that
18 was an, It does, question mark. I apologize.

19 A. No problem.

20 Q. All right. Also going back to Exhibit 31, you
21 do take responsibility for information on your
22 website as the managing partner, don't you,
23 Mr. Meyers?

24 A. I must, yes.

25 Q. Okay. Under Exhibit 31 on the last page,

1 again, touting Mr. Aaron Radbil's success, it
2 indicates: A prospective class of individuals
3 alleging injury resulting from freescore.com's
4 violations of the Federal Credit Repair
5 Organizations Act and gives us a cite for the Stout
6 case, correct?

7 A. Yes.

8 Q. If you will look with me, sir, under Tab Number
9 33. Here is a copy of the Stout case, which, if you
10 will turn to the second page, you will see that the
11 Defendant's Motion to Dismiss is granted, and
12 because the motion is granted, Plaintiff's Motion
13 for Class Certification is therefore rendered moot.
14 Is that correct?

15 A. Yes.

16 Q. So there was no class certification in the
17 Freescore case, correct, sir?

18 A. That is correct -- I believe that's correct. I
19 know the case is on appeal. But the order says what
20 it says, and I have no reason to disagree with that.

21 Q. All right. Fair enough. Let's look at
22 Exhibit Tab Number 35.

23 A. Okay.

24 Q. And this is a print-off from the Law Firm
25 Newswire, which is a paid submission service,

1 correct?

2 A. Yes.

3 Q. And that means that your firm pays them to do a
4 press release.

5 A. In so many words, I think that's a fair
6 statement.

7 Q. Right. And you draft the press release, right?

8 A. No, I don't. But I certainly have -- I
9 certainly have editorial review over it and may
10 adjust it. I think we have done two; but no, I did
11 not draft it.

12 Q. All right. And on this page there is a
13 judgment obtained against Wells Fargo Bank touting
14 the law firms of Weisberg & Meyers and another firm,
15 announcing that they have attained judgment against
16 Wells Fargo Bank South Central for violations of the
17 TCPA, correct?

18 A. That is correct.

19 Q. This indicates it was a victory for your firm.

20 A. Yes.

21 Q. All right.

22 A. Strike that. I'm not sure it indicates
23 anything of an opinion. It does say that we
24 obtained a judgment, yes.

25 Q. All right. If you will look with me under Tab

1 Number 36, this would be Judge Sparks' order --

2 A. Yes.

3 Q. -- order from the Austin Federal Court?

4 A. Yes.

5 Q. And on page 2 of that order, the Court
6 indicates at the bottom: It must assume Masters has
7 stubbornly refused to accept a full settlement offer
8 and has directed his counsel to continue litigating.
9 And there is a footnote, correct?

10 A. Yes.

11 Q. The footnote says: The only other possible
12 assumption -- that counsel's personal interests in
13 an eventual class action recovery has trumped his
14 duty to offer sound advice to his current client --
15 is one the Court is not willing to make. Right?

16 A. The order does say both of those things.

17 Q. And if you will turn with me on page 5, in the
18 last paragraph prior to the conclusion, the Court
19 states that it will deny the motion to reconsider
20 and grant the pending motion to dismiss, as
21 Wells Fargo's offer fully satisfies Masters' TCPA
22 claim and renders it moot.

23 This is a situation where Judge Sparks -- are
24 you -- have you lost me, Mr. Meyers?

25 A. I may have. Where were you, please?

1 Q. On page 5.

2 A. Yes.

3 Q. Do you see the paragraph beginning, Seeing no
4 basis?

5 A. Yes.

6 Q. Starting after the comma.

7 A. Yes.

8 Q. Okay.

9 A. Yes, I read that; yes.

10 Q. Have you reviewed it?

11 A. Yes.

12 Q. This is a situation where the Court said that
13 they were going to take the offer Wells Fargo had
14 made, correct?

15 A. That the Court said the plaintiff was going to
16 take the offer?

17 Q. Or else he was going to dismiss the case as
18 moot.

19 A. I think so, yes.

20 Q. So this isn't a victory that was won on behalf
21 of Mr. Aaron Radbil, was it?

22 A. The judgment was subsequently entered.

23 Q. All right. Let's continue on to Exhibit Number
24 37. Now, this was the website for Noah Radbil,
25 printed off earlier in the year, but I will concede

1 to you, Mr. Meyers, you have changed it since this
2 time, like about a week ago. Are you with me?

3 A. Yes.

4 Q. All right. On the first page of the entry,
5 there is a reference to a victory under Notable
6 Trial Victories where Mr. Radbil served as lead
7 counsel on the matter of Whaley and discussed that
8 this was a victory, correct?

9 A. Yes, sir.

10 Q. And Whaley is the case we talked about earlier
11 that resulted in a 92,000-dollar judgment against --
12 or a 90,000-dollar judgment against your client,
13 correct?

14 A. Yes.

15 Q. And you have since removed that, correct?

16 A. Yes.

17 Q. And there are also in here some specific
18 references to -- I'm sorry -- to other sort of
19 victories that Mr. Radbil had obtained on behalf of
20 the firm, correct, or in his experience, correct?

21 A. Yes, both of those statements are correct.

22 Q. All right. Under Notable Representation -- you
23 checked these out before you put them on your
24 website, didn't you, Mr. Meyers?

25 A. I don't think I did.

1 Q. Well, let's just take a look. Let's move down
2 to under Notable Representation, the second one,
3 regarding RIAA music-downloading case.

4 A. Okay.

5 Q. Are you with me on that one? Do you know the
6 name of that case?

7 A. That's not a case from my firm, so no, I do
8 not.

9 Q. You put it on your firm website.

10 A. It was put on my firm website. And if your
11 point, Ms. Malone, is that I should do a better job
12 with what is on my website, I will agree with you.

13 Q. My point is that you are misrepresenting what
14 Mr. Radbil's skills are on your firm website.

15 Let me show what -- the case is actually called
16 Capital v. Thomas.

17 A. Okay.

18 Q. And according to the Court's website, which I
19 can give you a cite on it, if I can read my form,
20 the initial jury trial was October 4, 2007, some two
21 years before Mr. Radbil was licensed as an attorney,
22 correct?

23 A. I have no idea.

24 Q. When he was licensed as an attorney?

25 A. No, when the trial was.

1 Q. And according to the court website, these
2 damages that were reduced occurred in 2011 and has
3 subsequently been reinstated by the U.S. Court of
4 Appeals in the 8th Circuit, you don't know one way
5 or the other, is that right?

6 MR. JEFFERSON: Objection, Your Honor, it
7 assumes facts not in evidence.

8 THE COURT: Overruled.

9 A. I know nothing about the case.

10 Q. (By Ms. Malone) So you allowed this to be your
11 website without checking it out to make sure it's
12 valid, correct?

13 A. I think that's a fair statement.

14 Q. All right. And let's look down on the second
15 page of that, and there is also one regarding
16 Scribd. Do you know that that case also was
17 concluded before Mr. Radbil became licensed as an
18 attorney?

19 A. I know nothing about that case, either.

20 Q. And in the NCAA case, Mr. Radbil's name does
21 not appear as one of the attorneys of record.

22 A. I know nothing about that case.

23 Q. So you have all these representations about
24 Mr. Radbil's skill set that you did not verify, is
25 that fair?

1 A. I think that's fair.

2 THE COURT: Ms. Malone, let's just make
3 sure. We talked about the RIAA blurb under Notable
4 Representation, and you mentioned two others. Can
5 you tell me where those are?

6 MS. MALONE: Yes, ma'am. And I apologize,
7 Judge, I think they put additional pages on mine.
8 But on page 3 of his thing under Notable
9 Representation, about -- there's a -- about the
10 fifth one up from the bottom on my page, it says
11 Mr. Radbil served as plaintiff's counsel for several
12 authors in a copyright-infringement case action
13 against Scribd, and I located that one.

14 And then the entry below that refers to
15 the NCAA suit. And that case actually is found in
16 the 9th Circuit, Cause Number 10-15387, and
17 Mr. Radbil does not appear as counsel of record.

18 MS. MALONE: Okay.

19 THE COURT: Yes.

20 Q. (By Ms. Malone) All right. Mr. Meyers, the
21 firm website that you produced, I think it's
22 Attorneys for Consumers that has the information
23 about your law firm on it, am I getting the name
24 right, AFC, is that it?

25 A. We appear on a website called Attorneys for

1 Consumers, if that's what you are asking,
2 attorneysforconsumers.com, if that's what you are
3 asking.

4 Q. And on that website your firm appears on is
5 actually web mastered by a company called AFC Legal
6 Marketing, LLC, correct?

7 A. That is correct.

8 Q. You are actually one of the attorneys of that
9 company.

10 A. That is correct.

11 Q. You are the owner of that company, right?

12 A. I am one of them, yes.

13 Q. And you are responsible for the content on your
14 firm website, correct?

15 A. I don't write it all, and I certainly don't
16 write things for other attorneys. But I think it is
17 more fair than not to say I am responsible for what
18 appears there, yes.

19 Q. Well, let's be clear, Mr. Meyers. According to
20 the Texas Disciplinary Rules of Professional
21 Conduct, as the managing partner of the firm, you
22 have a responsibility to make sure that the
23 information relayed about your law firm and the
24 skills of your attorneys is accurate. Isn't that
25 true?

1 A. I think that's a fair statement, yes.

2 Q. Okay. Let's look under Tab Number 38. This is
3 another one of the Law Firm Newswire paid
4 submissions, correct?

5 A. One of two, yes.

6 Q. Okay. We looked at one earlier, so this is the
7 second one.

8 A. Correct.

9 Q. And in this, again, you are citing that, Dallas
10 Texas Jury's Unanimous Verdict Finds -- and then I
11 think we had a little copying problem there, I
12 apologize -- Guilty of Violating Federal Law.
13 Correct?

14 A. Yes.

15 Q. And when you read this, it suggests that there
16 was a jury verdict and a victory in favor of your
17 client, does it not?

18 A. Yes.

19 Q. And my client complained about that, did they
20 not?

21 A. Yes.

22 Q. They complained to the Law Firm Newswire and
23 asked them to remove the site, correct?

24 A. Yes.

25 Q. They complained to the Better Business Bureau

1 about the website, correct?

2 A. Yes.

3 Q. And they complained to you and asked you to
4 remove that website, correct?

5 A. I think that's close to correct, yes.

6 Q. And then you reached out to me and said, hey,
7 did you know anything about this, correct, which was
8 appreciated by the way.

9 A. I reached out to you. I don't know that what
10 you said accurately reflects what I said or that it
11 doesn't, but I certainly reached out to you, yes.

12 Q. Okay. And I asked you to remove it from the
13 website, did I not?

14 A. I think in so many words that's a fair
15 statement. I think there was considerably more to
16 the conversation between us, but I think that's a
17 fair statement.

18 Q. I also asked you to remove the paid submission,
19 did I not?

20 A. I thought we were talking about the paid
21 submission.

22 Q. We are talking about both, the paid submission
23 and the reference on Mr. Noah Radbil's biography on
24 the website regarding the case. Didn't I ask you to
25 remove both of them?

1 A. I think you probably did. I'm not sure exactly
2 how the conversation went, and certainly I would
3 like the opportunity to fully recite it to the
4 Court, but I think you are making fair statements.

5 Q. Okay. And in fact, I told you if you just
6 removed it would probably satisfy my client's
7 complaint, correct?

8 A. Yes.

9 Q. And instead of removing it, you then, under
10 Exhibit Number 39, wrote a letter to the Texas State
11 Bar --

12 A. Yes.

13 Q. -- correct?

14 A. Yes.

15 Q. And you asked them to review whether or not --
16 we don't have to guess what the communication was,
17 because the e-mails are here, telling us what I
18 asked you to do and that I told you if you just
19 removed it my client's complaints would go away.
20 Correct?

21 A. Yes.

22 Q. And you did not remove those -- you did not
23 remove the paid submission, correct, even as we sit
24 here today, right?

25 A. The paid submission is there, correct.

1 Q. And you have removed it, in fairness to you,
2 from Mr. Radbil's bio on your website, which still
3 remains, but it's now listed as Of Counsel, correct?

4 A. Yes.

5 Q. So if a consumer were to find these, they would
6 think Mr. Radbil had won a big victory, correct?

7 A. I'm not sure what a jury or prospective
8 consumer would conclude.

9 THE COURT: Remind me what actually
10 happened in this case. I know we have it in the
11 earlier exhibits.

12 MS. MALONE: Sure. Your Honor, in this
13 case, there was a mixed verdict from the jury. The
14 jury found \$6,140 in favor of my client. I believe
15 it was \$650 in favor of their client, making my
16 client the net victor. They did not at that time
17 award attorney's fees, but under Texas law that's
18 not an option. Judge Hoffman continued the trial on
19 the matter and awarded \$85,000 to my client.

20 This is the one, Your Honor, where their
21 client indicated that she was not aware that she had
22 been offered \$7,000 and in addition that they would
23 waive their claims for the 6,000-plus-dollar debt.

24 This is also the one, Your Honor, that we
25 talked about where Mr. Radbil did not appear before

1 Judge Hoffman and that Judge Hoffman sanctioned him
2 for \$700.

3 Q. (By Ms. Malone) Now, Mr. Meyers, we have
4 talked quite a bit in this case about exhibits and
5 when things should have been notified under the
6 Rule 37 motion from Mr. Radbil. Do you recall that
7 testimony? Probably not.

8 A. I recall some of it.

9 Q. Okay. In the testimony that Mr. Radbil
10 provided to us, he indicated that he believed that
11 he -- I'm sorry, let me back up.

12 He indicated that he learned from his client
13 additional witnesses in December of 2012. Do you
14 recall that?

15 A. Yes.

16 Q. And you recall that we looked at Exhibit 7 in
17 our binder showing that your firm had reviewed those
18 damages on December the 6th. It's on the second
19 page of the exhibit, Mr. Meyers. Do you recall that
20 testimony?

21 A. Yes.

22 Q. And there's two entries, one by Aaron Radbil
23 and one by Noah Radbil indicating they had reviewed
24 actual damages and discussed it via e-mail, at
25 least, with you on occasions, correct?

1 A. That's what the entries say, yes.

2 Q. And that's when you were made aware that
3 Mr. White had done some sort of evaluation and
4 determination of what his damages are, correct?

5 A. I think that is probably a more fair statement
6 than not. But it would assume that I'm wholly
7 cognizant of time lines and things like that, so I'm
8 not sure. But again, I think that is a more fair
9 statement than not.

10 Q. Okay. In fairness, if we look at page 62 from
11 the first sanction hearing, which, I apologize, is
12 not there, Mr.-- I'm sorry. I will come back to
13 this one.

14 Mr. Radbil testified that those two entries
15 referenced to the damage memos from your client. Do
16 you recall that?

17 A. Yes.

18 Q. And if you look on the first page you will see
19 that the last entry entered here is December 15,
20 2012, correct?

21 A. I'm sorry, say that again.

22 Q. Sure. The last entry that we have in the time
23 notes that was an exhibit that we had possession of
24 shows December 12th, 2012. Correct?

25 A. Yes.

1 Q. Okay. Have you reviewed the affidavit from
2 Timothy White?

3 A. Yes.

4 Q. It is in, I believe, Mr. Radbil's exhibits,
5 Number 34.

6 A. I'm there.

7 Q. Okay. And do you see that in paragraph 7 on
8 page 2 he talks about providing an e-mail that is
9 Exhibit D regarding his damage claim.

10 A. Yes.

11 Q. It flips over into the next page.

12 A. Yes.

13 Q. Are you with me?

14 A. Yes.

15 Q. And if you will look -- and what they have
16 marked as Exhibit Number D, the date of that e-mail
17 is December 28th, 2012; is that correct?

18 A. Yes.

19 Q. So three weeks after Mr. Radbil's entry in the
20 case, there was an e-mail that they reviewed about
21 damages, correct?

22 A. Yes, that was three weeks after; yes,
23 thereabouts, yeah.

24 Q. So according to these records, on December 6th,
25 Mr. Aaron Radbil, Mr. Noah Radbil, and yourself saw

1 an e-mail from your client regarding damages, nobody
2 supplemented the discovery. And according to that
3 affidavit, which I am a little confused when I see
4 the December 28th e-mail and the December 6th
5 e-mail, there is yet another e-mail discussing
6 damages from Dr. White, correct?

7 A. Would you repeat that, please?

8 Q. Sure. Unless there's a problem here, but
9 according to your invoices that you submitted as
10 damages in discovery, the e-mails that Mr. Radbil
11 received discussing damages was on December 6th.
12 The e-mail provided in Mr. White's affidavit
13 references a December 28th e-mail, correct?

14 A. Yes.

15 Q. And even after this -- if this is a third
16 e-mail or if it's a second e-mail read on
17 December 28th, still there is no supplementation of
18 discovery at that time, correct?

19 A. I believe discovery had closed, but I think
20 that that's true, there was no supplementation.

21 Q. Even if discovery is closed, you do have an
22 obligation or a duty to supplement if information is
23 incorrect, do you not, Mr. Meyers?

24 A. I think so, yes.

25 Q. In the pleadings before this Court, you have

1 indicated that you believe there was an offer made
2 on January the 5th, 2012, of \$8,500, a demand made
3 by your office, correct?

4 A. I'm not sure of the date, but, yes, we did make
5 that demand.

6 Q. Okay. And Mr. White's deposition occurred on
7 December 15th, 2011, correct?

8 A. I don't know, but i will take your word for it.

9 Q. Okay. Well, if you want to look, it is in that
10 Exhibit 7, 0113 -- I'm sorry, 133. It would help if
11 I read the number correctly, I apologize.

12 A. What date did you say, Ms. Malone?

13 Q. Looks like on December 15th, Mr. Radbil
14 appeared at a deposition of his client.

15 A. Yes.

16 Q. Okay. So on December 15th, 2011, Dr. White's
17 deposition occurs, and then approximately three
18 weeks later your office sends a demand indicating
19 that it would take \$8,500 to settle according to
20 you, correct?

21 A. Yes.

22 Q. Okay. I don't remember receiving the e-mail,
23 that's not really the point. All right?

24 On November the 28th of 2012, one of the
25 exhibits that you provided to us indicates your

1 demand was \$65,000, correct?

2 A. Yes.

3 Q. Okay. On December 28th and December 6th, we
4 know from your invoices and from Dr. White's
5 deposition there's some discussion of damages,
6 correct?

7 A. Yes.

8 Q. And then following that, on February the 11th,
9 2013, there's a settlement conference with Judge
10 Stickney, correct?

11 A. I believe that to be true.

12 Q. And between the time of your demand on
13 November 28th and a settlement conference with Judge
14 Stickney, there are no other depositions, there are
15 no rulings by the Court, other than procedural for
16 us to proceed with trial, correct?

17 A. I take your word for it, yes.

18 Q. Okay. On -- at trial -- or at the last
19 hearing, Mr. Radbil indicated that at the settlement
20 conference his demand was in excess of \$100,000.

21 A. I believe that to be true.

22 Q. Okay. So you're following with me that your
23 demand was \$65,000 on November 28th. Your client
24 writes you memos indicating, we believe, based on
25 testimony to this Court, \$45,000 in additional

1 demand, and at Judge Stickney's settlement
2 conference your demand is now over \$100,000. Is
3 that fair?

4 A. At the present time, I have no reason to
5 disagree with what you are saying.

6 Q. Dr. White testified, as we read at the last
7 hearing, that he was assured by Mr. Radbil that his
8 damage demands of the \$45,000 would be admissible at
9 trial.

10 A. Could you say that again, please?

11 Q. Sure. Dr. White testified or -- or made a
12 statement to Judge Boyle -- and we discussed that at
13 the last hearing -- that he had been assured by
14 Mr. Radbil that his damages would be admissible at
15 trial.

16 A. I think that you have stated his testimony
17 accurately, but I am not completely sure. I have no
18 reason to disagree with what you are saying at the
19 present time.

20 Q. All right. I would like to talk to you about
21 your fee agreement, and that can be found at
22 Exhibit 14, Tab 14, Mr. Meyers.

23 A. Yes.

24 Q. And we had some controversy about this
25 agreement last time, but basically the part I want

1 to focus your attention on is the last paragraph,
2 11, regarding when your client may be required to
3 pay attorney's fees to Weisberg & Meyers.

4 A. Yes.

5 Q. And your position is that this is not a
6 violation of the ethics rules, correct?

7 A. My position is it is not a violation of the
8 ethics rules. But I have invited the Arizona Bar
9 and will invite the Texas Bar when these proceedings
10 are over to tell me otherwise, and I have invited
11 your criticism, constructive criticism, on it.

12 THE COURT: You said Tab 14 of which
13 exhibits?

14 MS. MALONE: Tab 14 of RAB's exhibits,
15 Your Honor.

16 THE COURT: All right.

17 Q. (By Ms. Malone) Do you recall -- you testified
18 to the Court that you have read the transcript for
19 the White trial, correct?

20 A. Yes.

21 Q. Do you recall that Mr. Meyers -- I'm sorry, I
22 looked at you and said the wrong name. I apologize.

23 A. No problem.

24 Q. (By Ms. Malone) -- that Mr. Radbil had a
25 discussion with the Court about whether or not this

1 would be used in such a way that Dr. White could not
2 terminate Mr. Radbil for incompetency because he
3 would be on the line for the attorney's fees, do you
4 recall that testimony?

5 A. I recall that there was discussion about the
6 issue. I don't recall precisely the way you say it,
7 and that is not to suggest that you are wrong, but I
8 do recall discussion about the issue.

9 Q. I am looking at Jury Trial, Volume 3, page 32.
10 This is the Court speaking at line 9: So right now,
11 if Dr. White were to fire you for your incompetence
12 under your contract he would owe you money; is that
13 right?

14 Mr. Radbil's response: I disagree with the
15 statement, number one; number two, we won on summary
16 judgment; and number three, we would never do that
17 to Dr. White.

18 Do you recall that?

19 A. I'm sure you are reading what you are reading.

20 Q. I'm asking you if you recall it, Mr. Meyers.

21 A. I wasn't there, Ms. Malone.

22 THE COURT: But you said you had reviewed
23 the transcript, I think.

24 THE WITNESS: Yes, and I don't have it in
25 front of me, Judge.

1 THE COURT: Right, okay.

2 MR. SUAZO: Your Honor, we have an extra
3 copy if you would like.

4 THE COURT: That would be fine, if you're
5 going to be using it for a few minutes.

6 MR. SUAZO: May I approach, Your Honor?

7 THE COURT: Yes.

8 THE WITNESS: Thank you. Thank you.

9 Q. (By Ms. Malone) In fact, in the exhibits that
10 you have provided to us -- and I will start with
11 your Exhibit Number 23 -- your firm has sued
12 clients, correct?

13 A. We have sued two clients in our entire
14 existence, yes.

15 Q. Okay. And let's look at Plaintiff's
16 Exhibit Number 23. The first one is a suit styled,
17 Weisberg & Meyers v. Richard Chalker, correct?

18 A. Yes.

19 Q. And the date on this particular document
20 indicates it was filed on February the 14th of 2013.

21 A. Okay.

22 Q. Okay. Do you need to see it? Would you like
23 me to bring your exhibits to you?

24 A. It's okay for right now. If I need them --
25 there are several binders -- I will get them with

1 the Court's permission.

2 Q. And in this exhibit, which is a suit to enforce
3 your attorneys fees agreement, it was signed by Noah
4 Radbil.

5 A. Yes.

6 Q. So at the time that he talked to the judge on
7 the 27th, he knew that your firm had, in fact, sued
8 clients, correct?

9 A. I'm sure he knew that we had sued Richard
10 Chalker, yes.

11 Q. And in fact, you put two lawsuits under this
12 same exhibit number. The second one was filed in
13 Florida, Weisberg & Meyers v. Debra Moore, correct?

14 A. Yes.

15 Q. And on page 3 of that particular pleading, your
16 firm quotes the same language about termination,
17 that the only way she can terminate is under these
18 circumstances, correct?

19 A. I'm all but certain that the language has small
20 differences, but I believe the point of the language
21 remains the same, yes.

22 Q. Okay. And in addition, you have also helpfully
23 provided to the Court Ms. Moore's counterclaim back
24 against your law firm, correct?

25 A. Yes.

1 Q. And beginning on page 2, Ms. Moore claims that
2 your firm did not keep her informed about the status
3 of what was occurring in the case. Correct?

4 A. That is what her pleading says, yes.

5 Q. And she also goes on to say that she spoke with
6 your partner, Alex Weisberg, about a related
7 lawsuit -- let's be clear. She was being sued by
8 the creditor at the same time you were representing
9 her in a debt collection action, fair?

10 A. Correct.

11 Q. And that Mr. Weisberg told her that he would
12 give her legal advice for this other matter,
13 correct?

14 A. Her pleading says what it says, Ms. Malone.

15 Q. I am asking if I generally summarized it,
16 Mr. Meyers; is that correct?

17 A. I imagine that I would like to review it, but
18 I'm certainly happy to say that it says what it
19 says.

20 Q. Okay. On page 4, at paragraph 22, Ms. Moore
21 alleges that Attorney Weisberg told Moore to calm
22 down and to not worry about the summons because the
23 CitiBank v. Moore pretrial conference was 30 days
24 away on or about October the 7th, 2010. Correct?

25 A. I don't have reason to doubt that you're

1 reading the pleading correctly.

2 Q. Would you like your copies, Mr. Meyers?

3 A. No, I don't have reason to doubt you are
4 reading it correctly.

5 Q. All right. And continuing at paragraph 25:
6 Attorney Weisberg plainly offered to Moore that he
7 would provide Moore with legal advice and guidance
8 and provide answers to her substantive legal and
9 procedural questions about the upcoming pretrial
10 conference for the CitiBank v. Moore case if Moore
11 called Weisberg back prior to the scheduled hearing
12 time.

13 A. Okay.

14 Q. Is that -- do you recall any of this?

15 A. I recall very, very vaguely, but I do not have
16 a deep recollection of it, and certainly because at
17 the very least I was not intimately involved with
18 the case. But I have no reason to believe you are
19 not reading it correctly.

20 Q. And what occurred at the case was at the
21 pretrial conference on the CitiBank v. Moore case,
22 Ms. Moore settled with the bank to have her debt go
23 away in exchange for dropping her debt collection
24 suit, correct?

25 A. Yes.

1 Q. She didn't make arrangements to have your law
2 firm compensated for its fees, correct?

3 A. That is correct.

4 Q. And you sued her.

5 A. That is correct.

6 Q. On paragraph -- on page 8, paragraph 57,
7 Ms. Moore states: Instead of informing Moore that
8 the settlement agreement could be set aside,
9 plaintiffs chose to intentionally withheld that
10 information in breach of their fiduciary duty and
11 immediately filed the instant action for breach of
12 contract. Correct?

13 A. I have no reason to doubt that you are reading
14 the pleading correctly.

15 Q. Did you ever have any conversations with
16 Ms. Moore or her counsel after that suit was filed?

17 A. I certainly wouldn't have had conversations
18 with Ms. Moore after that suit was filed. And I
19 don't recall whether I had conversations with her
20 counsel or whether Alex Weisberg had conversations
21 with her counsel or whether both of us did, but I
22 know we did communicate with her counsel.

23 Q. But you didn't change your agreement, did you?

24 A. Change our fee agreement?

25 Q. Yes, sir.

1 A. I don't think that we changed the core
2 substance of the fee agreement.

3 MS. MALONE: Your Honor, in interest of
4 speeding things along, we have briefed in great
5 detail why we think his fee agreement violates the
6 Texas Disciplinary Rules of Professional Conduct. I
7 can go through the exercise of having him read the
8 rule outside and do that, or I can just stand on my
9 briefing and try to save the Court a little time.

10 THE COURT: That's fine. And certainly
11 they can raise it in their part of the case. If you
12 are all right with that, that's fine with me.

13 MS. MALONE: I think it would speed things
14 up, and he's not going to agree my interpretation as
15 correct, so maybe we will save a little argument.

16 THE COURT: All right.

17 Q. (By Ms. Malone) All right. Have you read the
18 transcript from the original hearing with
19 Mr. Radbil?

20 A. I did.

21 Q. From that transcript, Mr. Radbil indicated at
22 page 38 that he had not talked to Dr. White
23 regarding the order issued in this case for 9,000
24 and change for costs. Do you recall that?

25 A. Yes.

1 Q. Have you spoken with Dr. White since then?

2 A. Yes.

3 Q. And have you made arrangements to pay that
4 money?

5 A. We sent you a check, yes.

6 Q. Okay. It's not been received by me. I'm not
7 saying you haven't sent it, I haven't seen one.

8 A. We sent it via mail, return receipt.

9 THE COURT: When would that have been?

10 MR. MEYERS: The first or second or maybe
11 the third.

12 THE COURT: Of?

13 MR. MEYERS: October.

14 THE COURT: This month.

15 MR. MEYERS: This month.

16 MS. MALONE: Judge, I haven't seen it.

17 They sent me a late e-mail indicating it had been
18 dropped in the mail. But if it was mailed on
19 Friday, coming from Arizona it's possible it could
20 be in today's mail. I'm not saying you haven't, I'm
21 just saying I don't have it.

22 Q. (By Ms. Malone) Did Dr. White agree that you
23 would be responsible for paying those costs?

24 A. We told Dr. White we were responsible.

25 Q. In your letter, you indicate that you believe

1 you are reserving the right to appeal this case,
2 citing a Texas state case, correct?

3 A. I think that's correct.

4 Q. You think Texas appellate law governs federal
5 cases, Mr. Meyers?

6 A. I know it doesn't.

7 Q. All right. In Mr. Radbil's testimony in the
8 original sanction hearing on page 82, he indicated
9 that he subpoenaed witnesses, a number of witnesses
10 that we complained about were added late. Do you
11 recall that?

12 A. I do.

13 Q. Do you recall Mr. Meyers (sic) testifying that
14 he didn't know what they were going to say because
15 those witnesses had been prepared by his client?

16 A. I recall Mr. Radbil saying that he did not know
17 what those witnesses would testify to and that he
18 assumed his client, our client, would have talked to
19 them.

20 Q. Did I say Mr. Meyers?

21 A. It's okay, I understood what you were saying.

22 Q. I want to be clear. I'm not saying that you
23 were here. I apologize.

24 And do you think it's appropriate for your
25 client to prepare your witnesses for trial?

1 A. I have a problem with preparing third-party
2 witnesses who aren't my client, so I don't know that
3 it's necessarily appropriate for a client to prepare
4 them. But I definitely do have a problem with
5 personally preparing third-party witnesses, yes.

6 Q. Mr. Meyers, do you think that you should talk
7 to the witnesses before you have them take the
8 stand?

9 A. I think that it would be nice to give a
10 courtesy call to people and say, hey, we're
11 subpoenaing you. I don't think that we should be
12 prepping third parties, no.

13 Q. You don't think it would be appropriate for
14 you, in your preparation, in your attorney work
15 product, that you would ask a third-party witness,
16 What did you see? Tell me what you heard? Not
17 preparing them, not telling them what to say, but to
18 ask them what they knew?

19 A. I think that that's fair.

20 Q. Did Mr. Radbil do that in this case?

21 A. I don't think he did.

22 THE COURT: When you say third-party
23 witnesses, what do you mean? Somebody that's not
24 your client.

25 THE WITNESS: Correct.

1 THE COURT: So if you have a case and
2 you're preparing for trial and you have a list of 20
3 witnesses that, unless they are actually attorney
4 client with you, you won't talk to them?

5 THE WITNESS: I don't think, Your Honor,
6 that I quote, unquote, won't talk to them, but
7 Ms. Malone asked a question about preparing third
8 parties.

9 THE COURT: I mean, you don't talk to them
10 ahead of time and organize your evidence and plan on
11 who is going to testify when about what with
12 witnesses other than your clients?

13 THE WITNESS: I cannot think of an
14 instance, and I could be wrong, where I have
15 personally called a third party.

16 THE COURT: Again, third party, you're
17 just talking about any witness in the case that's
18 not your client.

19 THE WITNESS: Correct. I cannot think of
20 an instance where I have called someone who isn't my
21 client or a representative of the defendants.

22 THE COURT: Who called or not, I mean they
23 have been on your witness list, certainly. So you
24 have never had a trial with witnesses who were not
25 your clients?

1 THE WITNESS: Or the defendants? To say
2 never, Judge, I would like a few moments to think
3 about it. But, no, as a rule, that would not be
4 something that I would desire to do.

5 THE COURT: So put that in simple terms,
6 what would be something that you would desire not to
7 do?

8 THE WITNESS: Well, I don't know how
9 people who aren't my client are going to testify,
10 and I certainly don't won't to be in a position to
11 either suggest to them testimony or be alleged to
12 suggest to them testimony.

13 THE COURT: You would like to know what
14 they said before they got up there. It would be
15 malpractice to put someone out there and not know
16 what they would say, wouldn't it?

17 THE WITNESS: I don't know the answer to
18 that, Judge, but that is not a practice of mine.

19 THE COURT: That makes no sense in terms
20 of normal litigation practices. You know that, I
21 hope.

22 THE WITNESS: I understand what the Court
23 is saying. And certainly this is a learning
24 experience, and everything that the Court says is
25 going to be very thoughtful.

1 THE COURT: Mr. Meyers, learning
2 experience? You have lawsuits and unhappy clients
3 all over the country.

4 THE WITNESS: That is not true.

5 THE COURT: It certainly looks like it
6 from the exhibits today. I am continually
7 astonished at your approach, and more importantly at
8 the effect that you have had on the community with
9 the representations to potential clients as to what
10 you might be able to do for them when, in fact, the
11 truth is so, so opposite.

12 It's a great concern for me that you are a
13 danger to potential clients out there because of
14 your practices and your thoughts and what you have
15 done and the overwhelming evidence of the damage
16 that you have caused.

17 All right. Ms. Malone.

18 Q. (By Ms. Malone) In Mr. Radbil's testimony, he
19 also discussed that he didn't believe -- I'm sorry.

20 Do you believe that you have an obligation to
21 notify the other side, if you have a change in your
22 damages, in disclosures?

23 A. Yes.

24 Q. In this case, that was not done, was it?

25 A. I believe that to be true.

1 Q. Mr. Radbil also indicated that he was going to
2 put on medical providers without discussing with
3 them prior to testifying as to what they would say
4 in relation to damages. Do you recall that
5 testimony?

6 A. Yes.

7 Q. And do you think that's appropriate,
8 Mr. Meyers?

9 A. Well, given what Judge Boyle just told me, I
10 believe that I have to rethink anything that I have
11 ever thought about it.

12 Q. Prior to what Judge Boyle just told you, do you
13 think it was appropriate to put a medical provider
14 on the stand without first learning what their
15 testimony would be?

16 A. I don't think it would be.

17 Q. You testified at the -- I don't think you
18 testified, I think you gave an opening statement at
19 the last hearing indicating that you had not been to
20 a trial where you watched Mr. Radbil perform with a
21 witness. Is that fair?

22 A. Yes.

23 Q. And you also indicated that you had not seen
24 Mr. Radbil in the way that he would conduct himself
25 in a hearing. Is that fair?

1 A. Well, he made arguments to the Court in the
2 case that you and I tried.

3 Q. In a hearing that is outside of arguments with
4 the Court, in a formal hearing setting like we are
5 in now, would it be fair to say that you had not
6 watched Mr. Radbil?

7 A. I think that's fair.

8 Q. Let's go one step further. Did you not take
9 Mr. Radbil to watch you try a case until after the
10 White case. Is that fair?

11 A. Yes.

12 Q. You did not take Mr. Radbil to watch you
13 conduct a hearing until after the White case. Is
14 that fair?

15 A. I -- I'm not sure.

16 Q. Do you think that, as a supervising attorney,
17 you have an obligation to make sure that associates
18 who are working under you have a fundamental
19 understanding of both trial procedure and hearing
20 procedures?

21 A. Yes, I do.

22 Q. Did you provide to the Court any evidence in
23 exhibits of any sort of policies or procedures or
24 training or anything that you offered to your young
25 associates at your firm?

1 A. No.

2 Q. Did you provide to the Court any sort of
3 indication that you've done anything to encourage
4 Mr. Radbil or any other young associate to learn how
5 to try a case prior to today?

6 Have you given anything to the Court to show
7 that you sat down and showed them how to try a case?

8 A. I've yet to present our case, but no, I have
9 not.

10 THE COURT: We're going to take a break.
11 Mr. Meyers. Do you continue to stand by Mr. Radbil
12 and his abilities as an attorney associated with
13 your firm?

14 THE WITNESS: I am certain, Your Honor,
15 that you are --

16 THE COURT: Don't talk about anything
17 about me. I want to know, do you continue to stand
18 by him as a member of your firm that you will
19 represent publicly and otherwise as a competent
20 attorney -- do you or not -- after you have heard
21 all of this?

22 THE WITNESS: I would represent Mr. Radbil
23 if I were asked, and he is not a member of my firm
24 any longer, but I would represent him as a competent
25 attorney.

1 THE COURT: That is not my question. My
2 question is: Do you stand by him as a quality
3 competent attorney from your firm to outside
4 potential clients as you have over and over again on
5 websites and otherwise, do you continue to stand by
6 him, affirm him as a competent attorney representing
7 your firm? I'm not asking you would you represent
8 him.

9 THE WITNESS: No, I understand that,
10 Judge. You're asking me multiple questions.

11 THE COURT: No, this is really simple.
12 This is really simple. Your relatives/relative
13 comes up to you and says, I need an attorney for
14 this and such, would you recommend Mr. Radbil after
15 all that you have heard about him so far?

16 THE WITNESS: I believe Mr. Radbil is a
17 competent attorney. I don't know if I would
18 recommend him, Your Honor.

19 THE COURT: All right. We're going to
20 recess until 1:30.

21 (Recess taken from 12:15 to 1:30 p.m.)

22 THE COURT: Let's continue where we left
23 off.

24 MS. MALONE: I don't have a lot left, Your
25 Honor.

1 Q. (By Ms. Malone) Mr. Meyers, if you would turn
2 with me to Mr. Radbil's exhibits, Number 34, which I
3 think is -- do you see it?

4 A. Yes.

5 Q. Okay. And Number 34 is Dr. White's affidavit,
6 Exhibit D, please.

7 A. Yes.

8 Q. The first page indicates that Dr. White is
9 waiting or attempting to obtain medical records,
10 correct?

11 A. Yes, sir.

12 Q. No medical records were ever produced in the
13 underlying case; is that correct?

14 A. I don't believe so.

15 Q. Let me start off with something that Judge
16 Boyle asked you at the end of the last break. You
17 indicated that you believe that Mr. Radbil is a
18 competent attorney but you're not sure that you
19 would recommend him to someone else; is that
20 correct?

21 A. That is what I said.

22 Q. But you do still advertise him on your website
23 now as Of Counsel, correct?

24 A. At the present time, seeing that we have cases,
25 yes, I do. But since the issues that you've raised

1 to me today during this hearing that you have never
2 raised before, I did send an e-mail to my webmaster
3 asking that he take down those profiles until they
4 are advised.

5 Q. Mr. Meyers, do you believe that it is the
6 obligation of other attorneys to advise you to check
7 the content of your website?

8 A. No.

9 Q. Is it your obligation to make sure that the
10 information that is being provided to the consumers
11 is accurate?

12 A. I think so, yes.

13 Q. At the prior sanction hearing, you suggested
14 that the testimony regarding the \$45,000 in damages
15 proffered by Dr. White was a rogue client. Do you
16 recall something along those lines?

17 A. I don't believe I used those words, but yes, I
18 believe I understand the general point you are
19 making.

20 Q. Which is that you believed it was the client's
21 fault that you had not anticipated -- or that
22 Mr. Radbil had not anticipated that Dr. White would
23 give that testimony; is that correct?

24 A. I believe I said it wasn't the client's fault
25 but that Dr. White gave that testimony without our

1 input, yes.

2 Q. And you understand that you have an obligation
3 to prepare your clients or to talk with them about
4 the kinds of questions and testimony that would be
5 allowed at trial, do you not?

6 A. Yes.

7 Q. And you also, when you told the judge that,
8 Judge Boyle pointed out to you from prior testimony
9 that Mr. Radbil had indicated to the Court he did
10 not believe it was required to offer -- or to
11 provide to the other side the 45,000-dollar damage
12 increase. Do you recall that?

13 A. I don't recall what you are talking about, but
14 I believe you.

15 Q. All right. Let me say it this way:

16 Mr. Meyers, do you recall Judge Boyle providing
17 to you testimony from Mr. Radbil from the trial in
18 which he did not say, This was our client's idea and
19 we did not know it was coming forward, but, in fact,
20 Mr. Radbil said he told the magistrate about it in a
21 settlement conference.

22 Do you recall that now?

23 A. I recall Mr. Radbil advising the Court that he
24 negotiated on Mr. White's behalf before the
25 magistrate and told the magistrate of Mr. White's

1 demands, if that's what you are asking.

2 Q. Do you recall that Mr. Radbil indicated to the
3 Court he believed it was sufficient under the
4 Federal Rules of Civil Procedure to tell the
5 magistrate as opposed to formally supplementing his
6 discovery?

7 A. I don't recall that, but I have no reason to
8 not believe you if that's what the transcript says.

9 Q. And when Judge Boyle pointed that out to you,
10 she also pointed out -- or there was provided
11 testimony from Dr. White in which he indicated that
12 Mr. Radbil had assured him the damage claims would
13 be offered into evidence. Do you recall that, sir?

14 A. Could you repeat that, please?

15 Q. Sure. Do you recall that, following, there was
16 an offer of testimony from Dr. White in which he
17 stated that he had been assured by Mr. Radbil that
18 that would be submitted for the trial, that those
19 damages would be submitted for trial.

20 A. I recall testimony by Dr. White in that regard,
21 yes.

22 Q. Did you ask Dr. White, following that hearing,
23 what Mr. Radbil had advised him?

24 A. I have since spoken to Dr. White and since
25 spoken to Dr. White about the issue of whether we

1 suggested that he testify to a specific number and
2 whether we suggested he leave that number to the
3 jury, if that's what you're asking.

4 Q. No. I'm asking: Did you ask Dr. White if
5 Mr. Radbil had assured him that the damage numbers
6 that he provided to Mr. Radbil would be offered at
7 trial?

8 A. I did not ask him that.

9 Q. Do you recall Judge Boyle specifically
10 indicating to you that in the prior -- in the trial
11 she found no evidence of there being a rogue
12 response from Mr. Radbil when the issue was first
13 raised during trial?

14 A. I'm sorry, I don't understand the question.

15 Q. Sure. And I apologize, Mr. Meyers, I've got
16 after-lunch-bad-questionitis, so let me try again:

17 Do you recall that in the sanctions hearing
18 Judge Boyle indicated to you that she found no
19 indication during her conversation with Mr. Radbil
20 during trial that, in fact, this was a rogue
21 response from a client and, in fact, that was a
22 concern she had about Mr. Radbil's position at
23 trial.

24 A. I don't recall that, but if you say that's what
25 the transcript says, I have no reason to disagree.

1 MS. MALONE: Your Honor, may I approach
2 him and remind him?

3 THE COURT: For the record, state what
4 that document is line and page.

5 MS. MALONE: This would be Volume 1 of the
6 Motions for Sanctions hearing, page 152, line 6
7 through line 11, which is the Court's discussion
8 with Mr. Meyers.

9 THE COURT: Go ahead.

10 A. Thank you.

11 Q. (By Ms. Malone) And simply so the record is
12 clear, Mr. Meyers, you actually backed up and read a
13 few pages to get context, correct?

14 A. I did.

15 Q. And following Judge Boyle's concern about
16 Mr. Radbil having fabricated or prevaricated
17 regarding the Rule 37 motion and the damages, did
18 you have any conversations with Mr. Radbil about the
19 importance of having candor with the tribunal?

20 A. Yes.

21 Q. And would you agree with me that both the Texas
22 Rules of Professional Conduct, Dondi, and the Texas
23 Attorney Creed require that an attorney be truthful
24 in dealing with the Court?

25 A. Amongst other things, yes.

1 Q. I'm talking specifically about telling the
2 truth to the judge, that there's an obligation to
3 you to do so.

4 A. It's an obligation to be truthful at all times.

5 Q. To the Court specifically.

6 A. To anyone and everyone.

7 Q. I understand, Mr. Meyers, I'm not arguing that.
8 I'm talking specifically in communications with the
9 Court.

10 A. Yes.

11 Q. Okay. And would you agree with me that in the
12 course of reviewing the transcript from the original
13 trial there were some questions as to whether or not
14 Mr. Radbil had been truthful to the Court.

15 A. Yes.

16 Q. Did you have communications with Mr. Radbil
17 about that being inappropriate?

18 A. Did I have communications with Mr. Radbil about
19 being untruthful being inappropriate, is that your
20 question?

21 Q. Yes, sir.

22 A. Yes. But the questions were more along the
23 lines of, Were you untruthful, as opposed to, It's
24 inappropriate to be untruthful.

25 Q. All right. Mr. Meyers, at the last hearing --

1 not the last, which was the continuance, but the
2 prior hearing, the Court talked to you about that
3 you seemed to believe that the only mistake that
4 Mr. Radbil had made was to be late during the trial.
5 I think he was almost three hours late to the trial.
6 Do you recall that?

7 A. The Court stated that, yes.

8 Q. Do you believe now, after reviewing -- have you
9 read the transcript again since the last hearing?

10 A. I have not.

11 Q. And your testimony to the Court is that you did
12 read the trial, though, prior?

13 A. Yes. Yes.

14 Q. Do you believe now, after having heard the
15 Court's concerns and the testimony that she raised
16 to you, herself, that perhaps Mr. Radbil did more
17 that was inappropriate than be late for court?

18 A. I am certain that the Court's concerns are
19 genuine. And I am certain that I, if offered the
20 opportunity, would do anything and everything to
21 make sure nothing like this ever occurred again.

22 Q. And I appreciate that, Mr. Meyers, but that was
23 not my question. I am asking if you now believe
24 that Mr. Radbil did something wrong other than be
25 late for court?

1 A. I don't know how to answer that question apart
2 from the way I just did.

3 MS. MALONE: Your Honor?

4 Q. (By Ms. Malone) I would like an answer,
5 Mr. Meyers. Do you believe Mr. Radbil did something
6 wrong other than be late for court? I'm asking what
7 you personally believe, sir, as an attorney.

8 THE COURT: Yes or no.

9 Mr. Radbil.

10 MR. RADBIL: Yes, Your Honor.

11 THE COURT: You are staring at him in a
12 way that looks a little intimidating to me, so if
13 you would just be careful with that. Take a seat.
14 I don't need anything from you.

15 Answer the question.

16 THE WITNESS: Can you ask the exact
17 question again, please?

18 Q. (By Ms. Malone) I can do my best; I can't
19 promise it will be exact words.

20 Mr. Meyers, after having read the transcript
21 before of the prior hearing, hearing the judge's
22 concerns as she expressed them to you in the
23 hearing, reading the briefings, hearing everything
24 that's happened so far, do you believe now that the
25 only thing Mr. Radbil did that was inappropriate in

1 the trial of this case was be late for court?

2 A. I don't know the answer to that.

3 THE COURT: Okay. That's a no that you
4 don't think he did, then.

5 Here's my question to you: Is there
6 anything going on behind the scenes between you,
7 Mr. Radbil, and his brother that has caused you to
8 feel in any way intimidated about candidly answering
9 these questions?

10 THE WITNESS: No.

11 THE COURT: What is it that is causing you
12 to prevaricate and answer such reasonable questions
13 to anyone in law school, let alone practicing law,
14 in such the way that you have? It makes no sense.
15 You know that, don't you, your responses to these
16 questions, that you are refusing to concede the
17 outrageous nature of Mr. Radbil's conduct.

18 So I'm just trying to figure out if there
19 is some other motivation that you are not telling me
20 about, because I don't see anything but a downside
21 for you; no agreements, no discussions, no
22 intimidation by him or his brother?

23 THE WITNESS: No, Your Honor.

24 THE COURT: Okay.

25 Q. (By Ms. Malone) Mr. Meyers, do you understand

1 that as a supervising attorney and head of a law
2 firm you have an obligation both to the community
3 and to the legal profession to make sure that your
4 associates do understand the fundamental rules of
5 practice?

6 A. I think so, yes.

7 MS. MALONE: No further questions, Your
8 Honor.

9 MR. JEFFERSON: Your Honor, I believe, in
10 kind of due order, Mr. Meyers, since I represent
11 just Mr. Radbil, that he was going to testify on his
12 own behalf in a narrative fashion of some form, and
13 then I would ask my questions once he's done.

14 THE COURT: Okay. Go ahead.

15 THE WITNESS: May I walk down to get my
16 exhibit book.

17 THE COURT: You may.

18 Ready?

19 Let's go.

20 THE WITNESS: As ready as I will be, Your
21 Honor.

22 THE COURT: Go ahead.

23 MR. MEYERS: On October 2nd, I filed an
24 affidavit with the Court that set forth my position
25 on various matters.

1 THE COURT: What exhibit is that, please,
2 if it's an exhibit?

3 MR. MEYERS: It is document 158, Your
4 Honor.

5 THE COURT: Is it part of your exhibit
6 book?

7 MR. MEYERS: It is not, Your Honor.

8 And the first thing I would like to point
9 out is, I think Ms. Malone makes a good point that
10 my statement that no one at the firm has been
11 disciplined is poorly worded, and it would have been
12 correct to call these sanctions discipline. My
13 intent was to speak about a bar grievance or a bar
14 discipline, but I again think she is correct.

15 I sent last week an e-mail, that I copied
16 Ms. Malone on, to about 50 defense lawyers and
17 defendants inviting them to contact me to set up a
18 pre-litigation system for resolving complaints. I
19 sent that e-mail because it is not my desire in any
20 case to drive up attorney's fees.

21 Plaintiff's lawyers relying on fee
22 shifting provisions do not get paid for all their
23 time very frequently, and I would prefer to resolve
24 things without being in court.

25 I have explained in my affidavit ways that

1 Ms. Malone and I may be able to work together to do
2 that, from setting up a pre-litigation system to
3 narrowing certain issues, having them brought up to
4 the Fifth Circuit or decided by declaratory action.
5 And I would like very much to be able to find what
6 those issues are and to have them stop causing a
7 great deal of litigation that is not necessary to
8 get to the truth of the matter.

9 When I first began to practice in Arizona
10 with another law firm, a former presiding judge and
11 a couple of the other judges suggested that me and a
12 couple of the defense attorneys form a committee to
13 discuss how to handle the cases that I was bringing
14 at the time, which were lemon law cases. That
15 committee did not get very far because the defense
16 attorney, who I consider to this day to be my best
17 mentor and best friend in the legal community and
18 has since retired, didn't think it was necessary.
19 But I think that the system could benefit from
20 collaboration like that.

21 THE COURT: That's all fine and good,
22 Mr. Meyers, but I want to know what happened here.
23 I want to know how all of this happened and what
24 your explanation is for it. I'm not interested in
25 remedial practices that you would like to or have

1 engaged in the past. What happened here? There's a
2 lot of red flags.

3 MR. MEYERS: And in my affidavit, Your
4 Honor, I have explained that whatever I have done to
5 make you think that this is anything but the worst
6 experience of my professional life, I apologize for.
7 And in congratulating Ms. Malone on her victory when
8 she contacted us about the conference, do we oppose
9 the motion for sanctions, I explained to her then
10 that I was in the process of getting admitted to
11 these courts, before federal courts in Texas, so I
12 could actively make sure under my name, directly, as
13 opposed to my firm name, which is my name, that none
14 of this ever occurred again.

15 And I aver to the Court, for what it's
16 worth to the Court, that as soon as I clearly
17 understand all of the things that the Court does not
18 care for, that they will never happen again by
19 anyone at my law firm or by me, given that these
20 will all be cases that I handle myself.

21 I have narrowed down my firm's active
22 caseload significantly over the course of the year
23 to make sure that I have an absolute handle on
24 everything that occurs. And the cases that
25 Ms. Malone has brought up are sometimes two and

1 three years old. That does not change the fact that
2 if improper behavior occurred that it occurred and
3 that it's part of my firm's record, but --

4 THE COURT: To be honest with you,
5 Mr. Meyers, I don't even know how you can go out now
6 under these circumstances and get in and retain a
7 relationship with a client at all without disclosing
8 all of this. This is a lot. This is substantial.

9 I don't know how you can -- how you will
10 be able to justify under all the ethical standards
11 taking on any new client that doesn't know about all
12 that you have done here; all these courts that have
13 sanctioned you, the fact that you still stand by
14 Mr. Radbil's egregious behavior, I honestly don't.
15 And this is a public record, and some day another
16 client that you take on after this may wonder, if
17 you don't tell them, why you didn't.

18 MR. MEYERS: I think, Your Honor, that I
19 would like the opportunity to explain the three --

20 THE COURT: That's what I'm waiting for,
21 because all I have heard so far is what you plan to
22 do in some sort of remedial fashion while all the
23 same standing by Mr. Radbil's behavior. And so go
24 ahead, I would like to hear your explanation. I
25 don't want to hear any more about what you propose

1 to do in the future. I would like to have an
2 explanation for why you misrepresented the kind of
3 trouble that your firm has been in and all the other
4 points that were very well and very clearly brought
5 up by Ms. Malone. So let's hear about that.

6 MR. MEYERS: I'm trying to get the
7 opportunity to present my response to Ms. Malone's
8 direct examination, Your Honor.

9 THE COURT: Okay. Let's go.

10 MR. MEYERS: An affidavit was filed with
11 the Court with in excess of 650 client thank you
12 letters. That affidavit had our BBB rating and BBB
13 excerpts showing 40-something satisfied clients and
14 one unsatisfied client and our FaceBook page, the
15 same thing. As my affidavit explains, this is why I
16 have been under the impression that I'm actually
17 helping people and not being a danger to them.

18 My attorney-client agreement has since
19 changed to add that clients may be responsible for
20 court costs should they lose their case. And based
21 on what has occurred here today, I will add the fact
22 that if a client loses a case that bad faith
23 attorney's fees may be awarded against them.

24 I am going to really consider what the
25 Court is saying about what do I have to advise

1 clients about these proceedings, and I'm going to
2 ask the bar the answer to that question as well.

3 I attached the two lawsuits -- or included
4 them as exhibits because the Court asked me how many
5 clients have we sued and how many clients have sued
6 us. So I provided that information, because the
7 Court asked the question. The Court asked about bar
8 complaints, and I provided that information because
9 the Court asked the question.

10 This Court had previously certified
11 Mr. Radbil and my firm as class counsel, as have
12 three other courts. So of three class actions that
13 we have been certified as class counsel, the total
14 attorney's fees incurred in all three cases combined
15 is less than the bill here for Ms. Malone.

16 I try to do things as efficiently as I
17 possible can, and I think -- I thought that it was
18 appropriate for me to look at those class
19 certification orders as commentary that my firm
20 meets the requirements and does good work. As I
21 explained in my affidavit, we have prevailed
22 multiple times before a Circuit Court of Appeals on
23 various issues. Again, I thought that that was
24 indicative that my firm did good work.

25 I have explained in my affidavit why I

1 feel Noah is a competent attorney. And I noted in
2 there that the people who are being represented as
3 aggrieved by actions by my firm have never sued us
4 or filed bar complaints. And I have never received
5 a complaint about Noah from an opposing counsel,
6 other than, as I say, as I sit here now,
7 Mr. Patterson, as Ms. Malone raises. So that is an
8 inaccurate statement.

9 THE COURT: Well, what about the
10 Washington Court that basically threw him out two or
11 three times because he didn't tell the truth on his
12 application to practice law before that court?
13 That's just one example.

14 MR. MEYERS: I don't -- those courts, Your
15 Honor, I appeared for with other lawyers from the
16 firm, and I was not counsel, I didn't speak or
17 anything, at Judge Coughenour's order to show cause
18 hearing, and Judge Coughenour did not, nor did
19 Pechman, sanction my firm.

20 I am not pleased to tell you that those
21 motions were the product of sloppy work. And since
22 those motions were filed, numerous people from my
23 firm have appeared as pro hac vice counsel in
24 Washington, and we have never had another problem.

25 I am currently pro hac vice in a

1 particular matter, and a matter that I was
2 pro hac vice that resolved, and other members of my
3 firm are pro hac vice. So I think those courts were
4 in a good position to determine what precisely
5 happened there, and I think it's important that they
6 did not sanction us; still, that was sloppy work,
7 that is not excusable.

8 THE COURT: Well, the order says, and I
9 quote: The plaintiff is currently represented by
10 three attorneys. The first, Joshua Trigsted, has an
11 address on file with the Washington State Bar
12 Association and this district's electronic docketing
13 system of 5200 Southwest Meadows Road, Suite 150,
14 Lake Oswego, Oregon 97035. The second, Jon N.
15 Robbins, has an office in Loon Lake, Washington, in
16 the Eastern District of Washington. The third, Noah
17 D. Radbil, has an office in Houston, Texas. On
18 July 27, 2011, Noah Radbil applied for leave to
19 appear pro hac vice. Local General Rule 2(d) states
20 that an attorney from outside the Western District
21 of Washington will be permitted to appear on a
22 matter if he is joined in such an appearance by an
23 associate attorney having an office in this district
24 and admitted to practice in this court.
25 Mr. Radbil's application was sponsored by Joshua

1 Trigsted, who claimed in the application that his
2 address was Seafirst Fifth Avenue Plaza, 800 Fifth
3 Avenue, Seattle, Washington.

4 On August 19th, 2011, the Honorable Robert
5 Lasnik, U.S. District Judge, ruled that the Trigsted
6 Seattle address did not constitute an office under
7 General Rule 2(d). On October 5th, 2011, the
8 Honorable Marsha J. Pechman, U.S. District Judge,
9 issued an order to show cause in which she observed
10 a pattern -- a pattern of misinformation surrounding
11 pro hac vice applications on the part of
12 Messrs. Robbins, Trigsted, and Radbil.

13 All of this leaves us with a case filed by
14 a plaintiff who has three attorneys, none of whom is
15 eligible to practice in this district, all of whom
16 who have been on notice of this fact since at least
17 August 19th. Mr. Trigsted now seeks leave to
18 withdraw. This ship may be sinking, but
19 Mr. Trigsted will not be permitted to flee just yet.
20 This motion is denied. The Court orders plaintiff
21 to show cause why this case should not be dismissed
22 for failure to prosecute and why Messrs. Robbins,
23 Radbil, and Trigsted should not be sanctioned for
24 their misrepresentations to the Court.

25 This is a huge thing to have on record

1 about an attorney. And this is one in a sheath of
2 papers that have come forward since the last
3 hearing, and I must say in many ways contradict your
4 position on how your firm has acted and Mr. Radbil
5 has acted. That's just one. I'm astonished. I'm
6 puzzled. What else do you have to say to explain
7 all of this?

8 MR. MEYERS: I believe, Your Honor, that
9 if the Courts there thought that we misrepresented
10 facts they would have sanctioned us. But I again
11 tell you that that was sloppy work for which there
12 is no excuse. Those courts have dealt with it.
13 There has never been an issue like that since that
14 time; there should have never been an issue to begin
15 with.

16 THE COURT: All right.

17 MR. MEYERS: As my affidavit states, Your
18 Honor, Noah's trial results are on par with what I
19 could determine to be national averages. Noah did
20 prevail in a case before Judge Sparks, and Noah
21 helped me greatly in a case before Judge Schell
22 versus Ms. Malone.

23 I did ask every question myself, perform
24 every examination and every statement, but Noah
25 prepared the vast majority of the statements for

1 me -- Mr. Radbil, I'm sorry, Your Honor -- prepared
2 the vast majority of the statements for me -- the
3 examinations, I'm sorry, the examinations, and he
4 argued a vast majority of the issues before Judge
5 Schell outside the presence of the jury.

6 I am certain that I can fix whatever the
7 Court is concerned about and that I will fix it. I
8 put in my affidavit the three cases that
9 Weisberg & Meyers has been sanctioned in, and I am
10 perplexed as to when a claim survives summary
11 judgment, survives two motions for directed verdict
12 and we ultimately lose before the jury, how that can
13 be sanctionable behavior. But the 10th Circuit says
14 it can be, and I have to and have curbed my practice
15 in recognition of that.

16 A second sanction order in the matter of
17 Barchard in the county court in Florida that
18 Ms. Malone raised, we alleged there that a
19 foreclosure action was subject to the FDCPA. The
20 county court disagreed in the face of split
21 authority before Federal Circuit Courts of Appeals.
22 But since then, several more courts, including the
23 11th Circuit where that case sits, held that
24 foreclosure activity is subject to the FDCPA.

25 The first appellate court, which is simply

1 the higher state court -- it's county court and then
2 the next is state court, district court, and then
3 the appellate court -- reversed the Barchard opinion
4 saying it can't be bad faith. But the appellate
5 court then said there was not enough evidence for it
6 to do that. So, again, I am perplexed about how a
7 theory upheld by the court of appeals deserves
8 sanctions.

9 The third case that Ms. Malone mentioned,
10 the Stovall case. Of the three cases that we have
11 been sanctioned, I think that that case is the
12 fairest one to apply a sanction to us. I think that
13 we have processes in place now that would have
14 uncovered things that should have been uncovered at
15 the time that case was first engaged. And I think
16 that a better job could have been done in uncovering
17 what needed to be uncovered in that case to
18 understand the lie of the land. And I have to very
19 seriously consider in the face of the sanctions and
20 the bar complaint who I should associate with and
21 align myself with.

22 I would like to take responsibility, as my
23 affidavit explains, for anything that I could have
24 done better here to prevent some of the things that
25 the Court is displeased about, and I will be damned

1 if I don't do things to prevent things like that in
2 the future.

3 THE COURT: But you stand by Mr. Radbil.
4 He's going to continue to be at your firm and you're
5 going to continue to promote him.

6 MR. MEYERS: He's not at my firm anymore,
7 Your Honor.

8 THE COURT: You stand by Mr. Radbil.

9 MR. MEYERS: I believe Mr. Radbil is a
10 competent attorney.

11 THE COURT: That answers my question. Go
12 ahead. Let's move on.

13 MR. MEYERS: But the Court is clear that
14 we don't work together anymore.

15 THE COURT: That's what you say. Go
16 ahead.

17 MR. MEYERS: Okay. To address several
18 of -- and like I said to the Court last time, the
19 Court at the first sanctions hearing asked about
20 realtime e-mails that showed that we were making
21 efforts to get Ms. Malone the trial exhibits,
22 efforts that I could have done better --

23 THE COURT: Well, Mr. Meyers, Mr. Radbil
24 says things that are just later determined to be not
25 true, and he edges his way through these things. He

1 said during court -- he never got me exhibits, hard
2 copy of exhibits. At the court hearing I asked him
3 several times, and he said they were on their way.
4 Not a word that they were on their way, lost
5 somewhere in FedEx, nothing. And at the hearing the
6 last time, he indicated to Ms. Malone that yes he
7 had furnished the Court with exhibits. So you never
8 know what the answer is going to be, but so far it
9 hasn't been true.

10 So if you're talking about realtime
11 e-mails that establish one thing or another, you
12 will never get past the fact that he lied to me
13 about the exhibits and he lied to Ms. Malone about
14 the exhibits at the last hearing.

15 MR. MEYERS: I believe that in hindsight I
16 should have done more to help him with the exhibits.
17 And I believe that he was traveling for a final
18 fairness hearing in a class action in New Jersey and
19 a summary judgment hearing in Houston.

20 THE COURT: I have heard all that.

21 MR. MEYERS: That's my fault. I should
22 have done more.

23 THE COURT: He didn't say any of this to
24 any of us during the trial or in the hearing until
25 later. And if it was the truth, it seems it would

1 have come out in the heat of the moment when he was
2 being pressured for it at trial, and not a word of
3 it, not a word of it.

4 MR. MEYERS: I understand, Your Honor.

5 THE COURT: Let's move on to the next
6 topic. All right?

7 MR. MEYERS: Thank you. There are
8 exhibits here in my trial book or in my sanctions
9 hearing book, Your Honor, of e-mail exchanges
10 between Ms. Malone and I. And before I forget, Your
11 Honor, we did agree, as Ms. Malone mentioned at the
12 beginning, to redact a certain exhibit. I have it
13 in here, so for the --

14 THE COURT: That's fine. Go ahead. I
15 know you all will take care of that before the final
16 exhibits are submitted to me. Let's go ahead.

17 MR. MEYERS: Okay. In these e-mails that
18 were sent, just in the normal course of business,
19 Ms. Malone states to me that she vouched to her
20 client for my professionalism, that I always call
21 her back, that she's always happy to talk to me,
22 that I'm helpful, been helpful in the past in
23 settling cases, that she respects me and my ability,
24 that I take into account clients' issues, that I do
25 the --

1 THE COURT: So the purpose of this is
2 what? That she was mistaken, she doesn't really
3 mean what she's saying here today? Is this before
4 she found out what you were up to? When was this
5 e-mail?

6 MR. MEYERS: These e-mails are over
7 several cases over the course of several years.

8 THE COURT: Right. Before any of this
9 ever happened, I assume; predated any of these
10 sanctions issues that have arisen out of this court.

11 MR. MEYERS: One was in response to her
12 sanctions e-mail, but I don't think that Ms. Malone
13 feels --

14 THE COURT: So one was what? She said
15 something very nice in a response to a sanctions
16 e-mail that she sent? I'm not clear on what you are
17 saying.

18 MR. MEYERS: That Ms. Malone -- before I
19 misspeak, Your Honor, give me one moment, please.

20 On March 14, 2013 --

21 MS. MALONE: Excuse me, Your Honor. Can
22 we have an exhibit number, please?

23 THE COURT: Yes.

24 MR. MEYERS: Yes, I'm sorry. This is
25 Exhibit 21.

1 MR. JEFFERSON: I'm sorry. Whose exhibit
2 folder?

3 MR. MEYERS: My Exhibit 21.

4 MR. JEFFERSON: Thank you.

5 MR. MEYERS: And in an e-mail dated
6 March 14, 2013, at 1:33 p.m. This is in the
7 exchange about the sanctions motion and what type of
8 conference is needed. And Ms. Malone stated: Thank
9 you, you proved my point, you always respond, and I
10 for one really appreciate it.

11 I understand that Ms. Malone makes some
12 allegations about my firm. I don't know that she
13 alleges that I am a dishonest person and has
14 previously said I do what I say when I say it. So I
15 feel like I'm an honest person. I understand that
16 the Court doesn't agree with that.

17 To discuss some of the exhibits that
18 Ms. Malone asked me about, as I stated in the Paris
19 and Little-Cadman cases in Washington, the orders to
20 show cause were discharged, as was the order to show
21 cause in the Saunders case. And in the Saunders
22 case, one of the cases that Judge Cogan relied on to
23 dismiss our client's claim was recently overturned
24 by the 3rd Circuit who stated a consumer can
25 revoke -- can revoke consent. I have addressed the

1 three courts that have sanctioned us and what I
2 think about each of those and how things need to be
3 done differently wherever they possibly can.

4 I've explained to the Court that I could
5 have done a better job in assisting with the trial
6 exhibits and assisting with multiple aspects of the
7 case. And in hindsight, I should have done a better
8 job of that.

9 There was a trial scheduled, Your Honor,
10 for this week in Houston, and because of these
11 proceedings, I would not have considered sending
12 anyone but myself to try the case. I obviously
13 wasn't available.

14 THE COURT: What would your choices have
15 been besides yourself?

16 MR. MEYERS: My choices would have been
17 other lawyers.

18 THE COURT: Like who? Mr. Ehrlich.

19 MR. MEYERS: He's not with the firm,
20 Judge.

21 THE COURT: I was wondering.

22 MR. MEYERS: Mr. Thompson and Mr. Panvini,
23 and neither have tried a case, so therefore they
24 would not have been an option.

25 THE COURT: Have they been involved in or

1 connected to these numerous sanctions or orders of
2 the different courts across the country?

3 MR. MEYERS: I think that it's possible,
4 Your Honor, that they worked on the cases; but no,
5 they were not --

6 THE COURT: Okay.

7 MR. MEYERS: -- formally involved in the
8 three cases, Your Honor.

9 THE COURT: You said you would have not
10 considered sending anyone else, and you talked about
11 two lawyers who have not tried a case before, so who
12 else would the choice have been?

13 MR. MEYERS: Well, that's the point, Your
14 Honor, there would have been no choice.

15 THE COURT: Okay. That's really not what
16 you said, but it's clear now. Okay. Go ahead.

17 MR. MEYERS: My point there, Your Honor,
18 is heeding what the Court was saying about making
19 sure that whoever tries a case is well trained. And
20 that case had been going on for better than a year
21 and a half. The client recovered, and I did not
22 even recover my costs, let alone any attorney's
23 fees. But certainly that's the cost of being
24 involved in something like this and being unable to
25 try a case.

1 THE COURT: Do you still run that website?
2 Is it AFC, is that what you call it?

3 MR. MEYERS: Attorneysforconsumers.com.

4 THE COURT: Is that yours?

5 MR. MEYERS: It belongs to a marketing
6 company that I own, yes, Your Honor.

7 THE COURT: So it's yours. And how long
8 has that been in operation?

9 MR. MEYERS: Summer of 2006.

10 THE COURT: Okay. And is -- what
11 exactly -- how does it operate? What does it do?

12 MR. MEYERS: I would object to the
13 question on the grounds of relevance and
14 notwithstanding --

15 THE COURT: Well, it's relevant because it
16 goes to your credibility. And at least at one
17 point -- and I'm looking at Defense Exhibit 35 --
18 you have some stuff in one of those connected
19 websites or from this about a judgment being
20 obtained against Wells Fargo which turns out wasn't
21 true. So I think it goes directly to your
22 credibility.

23 And of course we discussed at the very
24 first hearing my concern over the unbelievably
25 out-of-order behavior by Mr. Radbil. And in trying

1 to get your sense of it, you indicated and still
2 indicate you didn't see it that way. And you talked
3 about your law firm and who all was with your law
4 firm, how many people you have with your law firm,
5 but none of this was mentioned. So I'm curious now
6 what this is about. Is it money, is it nationwide,
7 exactly what is this? I think it goes directly to
8 your credibility.

9 MR. MEYERS: And the question is, what is
10 the website?

11 THE COURT: Let's start from the
12 beginning. What is it? You say you own it. What
13 is it? It's been in place since 2006. What does it
14 do?

15 MR. MEYERS: I don't think it does much
16 that any other website -- it's just a website. I'm
17 not necessarily sure I understand.

18 THE COURT: Why would someone go to the
19 website? What would be the benefit? It doesn't
20 have recipes or anything on it. What does it do?
21 What information does it disseminate that is the
22 purpose of the website.

23 MR. MEYERS: There are statutes; there are
24 summaries of consumer rights; there are inquiry
25 forms where someone can submit a question or a

1 complaint and have us review it.

2 THE COURT: So you can solicit business
3 through that.

4 MR. MEYERS: People contact us, yes.

5 THE COURT: Okay. And who is it that
6 decides what information goes on there? Because it
7 looks like you're putting little blurbs on there
8 about winning trials and whatnot. Is that straight
9 from you? Do you make the decision as to what goes
10 on that website?

11 MR. MEYERS: I've only -- sort of, Your
12 Honor. I've written my own bio, but I haven't
13 written anyone else's bio --

14 THE COURT: Well, it's a lot more than
15 bio, though. You've got news flashes about lawsuits
16 being won or lost. And you have now indicated that
17 you can sign up for a lawyer, and I suppose you, on
18 that. So what else is on there?

19 MR. MEYERS: You can't sign up for a
20 lawyer, Your Honor.

21 THE COURT: Well, you can contact one.

22 MR. MEYERS: You can contact a lawyer,
23 right.

24 THE COURT: Okay. It's a contact for you
25 to get clients.

1 MR. MEYERS: Yes.

2 THE COURT: Right. Okay. What else? How
3 many clients have you gotten from that website?

4 MR. MEYERS: I couldn't count, Your Honor.

5 THE COURT: Hundred, two hundred, three?

6 MR. MEYERS: More than a hundred, Your
7 Honor.

8 THE COURT: Since 2006?

9 MR. MEYERS: Yes.

10 THE COURT: All right. Are any of the
11 other partners that you have worked with, Mr. Radbil
12 included, have they ever been on that website?

13 MR. MEYERS: Been on the website?

14 THE COURT: Yeah, is their name on there
15 for one reason or another?

16 MR. MEYERS: Yes, every attorney at my law
17 firm has a profile, yes.

18 THE COURT: Okay. So who has a profile on
19 there right now?

20 MR. MEYERS: Me, Alex Weisberg, Aaron
21 Radbil, Russ Thompson, Joe Panvini, Holly Dowd,
22 Jeanne Lahiff, Tracey Tiedman, Venus Booth. If I
23 didn't say Mr. Radbil, Mr. Radbil.

24 THE COURT: Not this one.

25 MR. MEYERS: Both of them.

1 THE COURT: Oh, I thought you said he
2 wasn't with your firm anymore.

3 MR. MEYERS: He's listed as Of Counsel,
4 Your Honor, because he has cases --

5 THE COURT: So he is with your firm, he's
6 Of Counsel, so he still is with your firm.

7 MR. MEYERS: What I have read about the
8 meaning of Of Counsel --

9 THE COURT: It doesn't matter what you've
10 read about the meaning. You said he was not
11 associated with your firm anymore, and now you're
12 telling me he is on the website and is Of Counsel.
13 I think there are nine million lawyers that would
14 say that he's with your firm. He's on the website,
15 right?

16 MR. MEYERS: Yes.

17 THE COURT: And he's Of Counsel.

18 MR. MEYERS: Yes.

19 THE COURT: So what are his duties as Of
20 Counsel for your law firm?

21 MR. MEYERS: Watching the Texas state
22 matters until we can find a competent counsel to
23 hire to substitute or withdraw.

24 THE COURT: You don't think with all
25 that's gone on the last couple of years, that you

1 don't owe any kind of disclaimer about what's gone
2 on with Mr. Radbil to keep him on your website?
3 That's not some kind of false advertising?

4 MR. MEYERS: We are not engaging new Texas
5 state clients.

6 THE COURT: Well, Texas state clients or
7 any clients anywhere, don't you think that could be
8 considered a deceptive trade practice or false
9 advertising to have him as promoted on your law firm
10 website or your own website without disclaiming and
11 notifying people what's happened with him?

12 MR. MEYERS: I have never thought about
13 it, but I will send a letter to the bar asking that
14 question.

15 THE COURT: If you were to hire a law firm
16 for Deceptive Trade Practices Act and become
17 attorney-client privilege, work on this case with
18 them, you wouldn't want to know that they have been
19 in all sorts of trouble with different courts all
20 over the land, you don't think that would be
21 something that you would be entitled to know?

22 MR. MEYERS: I will have to ask the bar
23 that question, Your Honor, because I don't think
24 that --

25 THE COURT: Well, if you have to ask the

1 bar, it's another thing that you probably ought to
2 have on your website, Mr. Meyers. It's shocking
3 that you are practicing law with this attitude. But
4 at least this is a public record, so it will be out
5 there, and anyone who wants to know will know what
6 your attitude is about Mr. Radbil, about his
7 activities in this case, about putting things out
8 there that are not true, about not disclosing key
9 material information that could change a client's
10 decision as to whether or not to retain you.

11 All right. What else is on this website?

12 MR. MEYERS: I don't think there's much of
13 anything else on the website. It's information,
14 statutes, summaries, attorney profiles.

15 THE COURT: Are there any success stories
16 in there right now?

17 MR. MEYERS: Yes.

18 THE COURT: What are those success stories
19 you have put on the website right now?

20 MR. MEYERS: I believe they relate solely
21 to debt settlement, Your Honor.

22 THE COURT: Who would be the lawyers
23 involved in those success stories?

24 MR. MEYERS: Probably most, if not all,
25 lawyers have settled debts at the firm.

1 THE COURT: Who are they? What names?

2 MR. MEYERS: I would think me,
3 Mr. Weisberg -- Your Honor, I would be guessing. I
4 would be happy to look and tell you. I don't know
5 the answer.

6 THE COURT: The point is, it seems that if
7 you are going to put success stories on here and say
8 things that would encourage someone to contact
9 you -- which I'm sure is part of the purpose of this
10 website, as any others -- that you would feel some
11 compunction to have some kind of disclaimer or some
12 notification about the downside of your background
13 and your firm's background, at least as far as the
14 last couple of years, and it doesn't sound like
15 there is anything out there like that.

16 MR. MEYERS: I think that that's a fair
17 statement.

18 THE COURT: So it just supports the
19 position of the defense counsel that you freely
20 misrepresent yourself and support that kind of
21 activity in the other lawyers that you work with,
22 which is of grave concern.

23 Go ahead. I want to hear what else you
24 have to say in response to the defense evidence
25 today and anything else you want to say.

1 MR. MEYERS: I am not aware of any law
2 firm that lists every single case that it's ever
3 been involved in, but I will absolutely, positively,
4 take this transcript and ask the bar what I am
5 supposed to do.

6 THE COURT: Well, this is a lot simpler
7 than that. You have been revealed today to have put
8 success stories on there in cases that were not. So
9 a complete misrepresentation of what actually
10 happened in an effort to promote yourself, that's
11 what I'm talking about, not putting every case on
12 the website. I'm talking about those that might
13 mislead people that there is another side to the
14 story.

15 MR. MEYERS: I understand and respect the
16 Court's opinion.

17 THE COURT: Okay.

18 MR. MEYERS: And all I can do is --

19 THE COURT: Check with the bar.

20 MR. MEYERS: Get some guidance, that's
21 right.

22 THE COURT: Let's go.

23 MR. MEYERS: Ms. Malone mentioned the case
24 of Dan Lopez and not having the client's authority.
25 There is an exhibit that plainly addresses, as the

1 client's declaration, that we got his number and
2 that we had his authority. That is Exhibit 13
3 and --

4 THE COURT: All right.

5 MR. MEYERS: -- it comes with an e-mail
6 exchange between then managing Texas attorney Susan
7 Landgraf and the defense lawyer, Mr. Banowsky. And
8 Ms. Landgraf had previously set on the grievance
9 committee for the Texas Bar, so I certainly trusted
10 her judgment.

11 THE COURT: If I could, Ms. Malone, would
12 you tell me what exhibit it is that deals with
13 Lopez? I see it, it's 17.

14 MS. MALONE: Yes, ma'am. And Your Honor,
15 we did not make it an exhibit. But to our original
16 motion we attached Mr. Lopez's deposition --
17 Mr. Martin can get you an exact cite -- where he
18 said he had not been advised of the settlement
19 offer. We did that with Mr. Radbil's testimony
20 earlier, and I didn't re-give it to the Court.

21 THE COURT: That's fine.

22 Mr. Meyers, go ahead.

23 MR. MEYERS: Thank you.

24 Ms. Malone raised, as an exhibit, the
25 Brookter case. That was a case where it was a

1 period of class actions where an offer of judgment
2 was made, and the Court here dismissed the case,
3 saying the offer of judgment mooted the claim.

4 On Friday, the Ninth Circuit issued an
5 opinion saying the opposite. And that case -- we
6 have a similar case, the Payne case, which, not in
7 the class action context, but is it up on appeal
8 before the Fifth Circuit.

9 Ms. Malone mentioned the Allison case and
10 was there a settlement, wasn't there a settlement?
11 I have the letter, and it cannot be an exhibit; the
12 Court said no new exhibits. But like I said, a
13 letter dated May 24th that says, via overnight
14 delivery from May 30th, and my e-mail shows -- the
15 e-mail in the file shows is from May 29th.

16 And it says: I have reviewed the First
17 Amended Complaint pertaining to your client, Dan
18 Allison. I believe your additional claim is
19 unfounded based upon both the facts and the law.
20 That having been said, the only damages to which
21 your client would be entitled under the Texas Debt
22 Collection Act is \$100 in statutory damages,
23 therefore I am willing to pay this amount in order
24 to avoid the necessity of responding to your
25 allegations. Enclosed, please find a check payable

SHAWNIE ARCHULETA, CSR/CRR
FEDERAL COURT REPORTER - 214.753.2747

1 to Mr. Allison. This amount is being tendered
2 without reservation, save and except for the
3 stipulation that it pertains to any claims of
4 damages which Mr. Allison may have against either
5 myself, my client, or my firm under the Texas Debt
6 Collection Act and arising out of the alleged
7 misconduct. Finally, we oppose your request to
8 amend your complaint because it has no basis in fact
9 or law and because the \$100 renders such claim moot.

10 So apparently my firm thought that filing
11 a notice of settlement was appropriate in the face
12 of that letter.

13 THE COURT: And that was which case?
14 Remind me.

15 MR. MEYERS: That was the Allison case,
16 Your Honor.

17 MS. MALONE: Exhibit 29, Your Honor.

18 THE COURT: Thank you.

19 MR. MEYERS: Ms. Malone asked me questions
20 about Brookter and Payne. And the argument that
21 receiving something via e-mail and facsimile is
22 gamesmanship. Well, the -- I would prefer never
23 to -- never to be debating issues like that --

24 THE COURT: I didn't hear her say that. I
25 didn't hear her say that once. What I heard her say

1 is that your partner or associate, Mr. Radbil,
2 missed his deadlines, and I guess now he's coming
3 back with copies of e-mails and/or facsimiles that
4 somehow are supposed to remedy what he did, but
5 that's the problem. I don't think there's any
6 overall general problem with e-mails. I never heard
7 that.

8 MR. MEYERS: Ms. Malone didn't mention
9 that, and maybe I'm not --

10 THE COURT: Well, the problem was he was
11 in Houston. So apparently there was no one who
12 could actually get the hard copies, as I understood
13 it, and it was all too late, is my memory.

14 MR. MEYERS: I'm not talking about the
15 trial exhibits, Your Honor.

16 THE COURT: Well, that was one area where
17 the point was raised.

18 MR. MEYERS: What I'm speaking about is
19 that Ms. Malone said that our firm said that
20 receiving an offer of judgment via e-mail and
21 facsimile is not in compliance with the rules, so
22 therefore it's invalid. I don't particularly care
23 for that argument. If you got it, you got it, and
24 that's what really matters is that you got it.

25 THE COURT: Ms. Malone, why don't you

1 respond to that directly?

2 MS. MALONE: Yes, Your Honor. The point
3 of bringing that was that they had made that
4 argument, which I'm hearing from Mr. Meyers saying
5 he doesn't really like that argument. But the point
6 was that Judge Hoyt, down in the Southern District,
7 found that to be petty gamesmanship. And following
8 Judge Hoyt's admonition, they turned around and made
9 the exact same argument in the Payne case. And the
10 problem there was we had sent certified mail and
11 facsimile, because we had already read the Brookter
12 case. So once Judge Hoyt tried to correct the
13 behavior, they again continued to make that same
14 argument even though it wasn't factually correct.

15 THE COURT: Thanks for the clarification.

16 MR. MEYERS: And my point being that the
17 rules are the rules. And if I get something, then
18 I've gotten it and I don't need to say, well, this
19 didn't come via the proper method, but the rules
20 remain the rules.

21 THE COURT: So what about Judge Hoyt's
22 admonition? Did that cause you any pause to do it
23 the same way again?

24 MR. MEYERS: I was not involved in either
25 of those cases.

1 THE COURT: So you weren't aware of it.

2 MR. MEYERS: I don't know if I was or I
3 wasn't, Your Honor. But I'm telling you, I don't
4 agree with that argument. You get it, you get it,
5 that's the end of it, you have it.

6 THE COURT: Okay. Let's move on.

7 MR. MEYERS: Ms. Malone correctly points
8 out that opposing counsel have no duty to tell me
9 what is on my website, that I should know myself.
10 I, nonetheless, would have liked to have known what
11 bothered her about it and had the opportunity to
12 take action. Whether I would have, I don't know,
13 but certainly would have liked to have known what
14 bothered her about it.

15 THE COURT: What was it that bothered her
16 that you would have liked to have known about it,
17 just to refresh my memory?

18 MR. MEYERS: Apparently some cases could
19 have been better described.

20 THE COURT: Like, you lost them when you
21 said you won them?

22 MR. MEYERS: Well, I'm not -- well, yes,
23 the Whaley --

24 THE COURT: And you are sort of the
25 webmaster on that, are you not?

1 MR. MEYERS: As that term of art exists, I
2 am not.

3 THE COURT: You are in charge of it,
4 aren't you?

5 MR. MEYERS: When you say in charge of
6 it --

7 THE COURT: What does that mean to you?
8 You control the information that goes on there,
9 Mr. Meyers?

10 MR. MEYERS: I have a strong say in what
11 goes on there.

12 THE COURT: Okay. Let's move on to the
13 next point.

14 MR. MEYERS: Well, the point I'm trying to
15 make, Your Honor, is that the minute someone tells
16 me something is inaccurate, I would take the
17 opportunity to fix it or to get an answer as to
18 whether this is something to be done.

19 THE COURT: And how dare they not let you
20 know that you have publicly disseminated false
21 information upon which prospective clients might
22 rely about a case that you lost when you say you
23 won. How dare they not let you know that that is
24 what is out there. That seems to be the attitude.

25 MR. MEYERS: That's absolutely not the

1 attitude. I said Ms. Malone was right in pointing
2 out she has no duty to tell me that stuff. That's
3 absolutely not the attitude.

4 Ms. Malone pointed out the Stout case and
5 I believe the Brookter case. They don't say that we
6 were certified as counsel. They simply say, notable
7 class action information that someone is involved
8 in. I will have an answer to what should be on a
9 website and what shouldn't be on a website from the
10 bar.

11 THE COURT: Ms. Malone, if you could just
12 refresh my memory as to where the website posting
13 is, what exhibit is that?

14 MS. MALONE: Yes, Your Honor. The exhibit
15 regarding -- I think it's Beason instead of
16 Brookter, I think Mr. Meyers misspoke. And the
17 other one is the Stout case. The exhibit was
18 Exhibit Number 31, Your Honor, which is Mr. Aaron
19 Radbil's information. The references to those two
20 notable sections is on page 3 and 4 of that exhibit,
21 Your Honor.

22 THE COURT: Okay. I have it. Thank you.

23 MR. MEYERS: The Masters case, judgment
24 was entered. The order that Ms. Malone attached did
25 not reflect the subsequent order that judgment was

1 entered.

2 MS. MALONE: Excuse me, Your Honor. Can
3 we have a short break? I apologize to the Court.

4 THE COURT: We will take a ten-minute
5 break.

6 (Recess taken.)

7 MR. JEFFERSON: Your Honor, before we get
8 going, we were doing some chatting during the break
9 and can we visit with the Court briefly on some
10 housekeeping issues?

11 THE COURT: Yes.

12 MR. JEFFERSON: I think that Ms. Malone
13 says that -- or I told her that I did not anticipate
14 taking very long with Mr. Meyers, that I would
15 probably only have maybe 20 minutes' worth of
16 questioning, she's going to have some redirect, and
17 of course he's going to be on the stand as long as
18 he needs to and however long you have with your
19 questioning with him.

20 Then -- it's obviously their case in
21 chief, but Ms. Malone says that she was going to be
22 the next witness after that. When we were doing the
23 time estimates, she was saying I'm -- you know,
24 we're clearly not going to finish with Ms. Malone
25 today. And one of the things that I would like to

1 do is have the opportunity to eventually re-call
2 Mr. Radbil to clarify a few issues.

3 So given the fact that we know that we are
4 sadly not going to finish today, Ms. Malone asked,
5 well, if that's the case, then, after Mr. Meyers
6 finishes with his testimony, would you mind if we
7 just called it a day, subject of course to the
8 Court's approval. And we said, no, we didn't, as
9 long as when we do the reset date we take in mind my
10 upcoming anniversary trip.

11 THE COURT: Okay. So let's see. What I
12 would like to do is have you finish with your
13 questions of Mr. Meyers.

14 MR. JEFFERSON: Yes, we clearly said we
15 want to finish with him today.

16 THE COURT: Okay. I will work with you on
17 this. I know this is important. I will work with
18 you. I have told Mr. Meyers from the beginning that
19 I will give him a chance to fully defend on this, as
20 with Mr. Radbil. So yes, I need to get another
21 date, but we will get this done this year, so we
22 need to have everybody ready the next time we do
23 this. Let's finish as much as you we can today.

24 MS. MALONE: I don't mind taking the stand
25 and starting, I just don't think realistically they

1 would finish.

2 THE COURT: All right. I understand.

3 Go ahead.

4 MR. MEYERS: Ms. Malone and the Court have
5 separately raised questions about my fee agreement.
6 As you have seen, I have asked the Arizona Bar for
7 an opinion on it. I can't ask the Texas Bar now
8 because it is the subject of a litigation.

9 THE COURT: Okay.

10 MR. MEYERS: I put in that letter
11 authority that can be relied on to suggest my fee
12 agreement is proper, but if obviously a bar tells me
13 otherwise, then otherwise it shall be. But I do
14 want the Court to know that I -- I have submitted --
15 and I would really like constructive criticism from
16 Ms. Malone and an understanding from the Court's
17 perspective how better the clause that the Court and
18 Ms. Malone are questioning should be phrased.

19 The Court at the last hearing asked me
20 about the -- how many clients have sued us. It's
21 one client who filed a countersuit. That client
22 raises -- that client's lawyer raises a number of
23 issues in that countersuit. The client never filed
24 a bar complaint and only said what she said in
25 response to our lawsuit. I think that it weighs

1 greatly that one client has sued us and it was a
2 countersuit.

3 The last point I would like to --
4 next-to-last exhibit-- maybe not next-to-last, maybe
5 one of the last few points, but they will be quick.
6 Exhibit 28, Ms. Malone had mentioned --

7 MS. MALONE: I'm sorry, Your Honor, 28 for
8 who?

9 MR. MEYERS: I'm sorry, 28 for
10 Weisberg & Meyers.

11 MS. MALONE: Thank you.

12 MR. MEYERS: Ms. Malone had mentioned that
13 all of these courts telling us we overbill, we
14 overstaff. I had our office pull every single fee
15 motion we could find internally and on Westlaw and
16 prepared a chart for the Court, for the Court to
17 make its own determination what other courts have
18 said with regard to our fees, and I certainly need
19 not spend the Court's time reading the chart.

20 Prior to -- after the White case or after
21 the trial, Your Honor, somebody -- one of
22 Ms. Malone's colleagues reached out to my partner
23 regarding the upcoming motion for sanctions and --
24 let me not misphrase what this gentleman said.

25 THE COURT: Just let us know what you are

1 referring to.

2 MR. MEYERS: I am going to Exhibit 29.
3 Exhibit 29, Your Honor, of the Weisberg & Meyers
4 book.

5 THE COURT: Okay.

6 MR. MEYERS: And that concludes: Robbie's
7 willing to work with you or Marshall to try to avoid
8 the ladder, which refers to sanctioning Noah and
9 maybe Weisberg & Meyers.

10 And the last point -- second-to-last
11 point, Your Honor, second-to-last point. I have
12 since corresponded with Ms. Malone -- and the e-mail
13 attached as or included as Exhibit 30 is not the
14 complete chain between us because we did correspond
15 after exhibits were due -- to tell her that I would
16 like to take responsibility for anything and
17 everything that is -- that could have been within my
18 control, and that I would like to work with her to
19 resolve these issues and to avoid ever being in a
20 situation like this.

21 I did tell her in an e-mail that is not in
22 the -- in fact, that was transmitted after the date
23 that the exhibits were due, that it makes me
24 nauseous to think that in three cases she could have
25 incurred over \$200,000 in attorney's fees, but that

1 I don't begrudge her reasonable fee. And I don't
2 think that these types of cases, as a well-defining
3 role with very limited exceptions, merit the type of
4 litigation that occurs with our offices, between
5 Ms. Malone and our office, Ms. Malone's office and
6 our office.

7 But, like I said to her, it takes two to
8 tango. And by no means could it possibly be all her
9 doing, and that is why I want to be here to do
10 everything and anything I possibly can to not ever
11 let anything like this happen again. And I am
12 certain that, given the Court's feelings about what
13 occurred here, that I could have done more to avoid
14 a number of things that the Court finds
15 objectionable, and I will strive to do that in the
16 future and to never be involved in anything like
17 this again.

18 I don't think that when a client doesn't
19 want a thousand-dollar offer of judgment and/or us,
20 in our opinion, think a case has more value, that
21 not accepting that offer of judgment is improper. I
22 think it's the client's decision, and we certainly
23 have accepted considerably more offers of judgment
24 at the client's direction than we rejected.

25 At the same time, when filings become as

1 numerous as they are in this case and in what I
2 consider the three companion cases of White,
3 Whatley, and Whatley and then Mr. Patterson's case
4 in Scarlott, I could have that on my radar. And I
5 could get to the bottom of it, figure out why, and
6 do more to make sure that either concludes -- that
7 it concludes, because it's not going to happen
8 again.

9 THE COURT: All right.

10 Mr. Jefferson, did you have some
11 questions?

12 MR. JEFFERSON: I do, Your Honor.

13 May I approach the lectern?

14 THE COURT: You may.

15 MR. JEFFERSON: Thank you.

16 **CROSS-EXAMINATION**

17 Q. (By Mr. Jefferson) Mr. Meyers, good afternoon.

18 You and I, sir, have met for the first time
19 this morning, right?

20 A. Yes.

21 Q. And we've spoke on the phone a few times.

22 A. Yes.

23 Q. Okay. Let me just see if I can clear up a few
24 things from the very beginning concerning some firm
25 structure issues.

1 Can you briefly tell me who the partners of the
2 Weisberg & Meyers firm were on the -- in February of
3 2013, which is during the trial of the underlying
4 case?

5 A. Yes. The two equity partners or senior
6 partners would be myself and Alex Weisberg, and
7 non-equity or junior partners would have been Mr.
8 Ehrlich and Mr. Aaron Radbil.

9 Q. And just to be clear, because a couple of times
10 there were some references to a partner named
11 Mr. Radbil. And since his brother is at the firm
12 and currently at the firm, Mr. Noah Radbil has never
13 been a partner at the firm. Is that true?

14 A. That is true.

15 Q. The judge asked you a few questions a moment
16 ago regarding the change of the website, of the Of
17 Counsel situation that Mr. Noah Radbil is currently
18 listed under. Do you recall some of those
19 questions?

20 A. Yes.

21 Q. Okay. I want to have a few points of
22 clarification here for my own edification and for
23 that of my client.

24 The folks that are in charge of the website,
25 whoever that may be today, be it one or more than

1 one person, Mr. Noah Radbil is not amongst that
2 group, correct?

3 A. Yes.

4 Q. All right. And as I appreciated the
5 explanation that you gave to the Court, the reason
6 why Mr. Radbil is still being listed as an Of
7 Counsel on the Weisberg & Meyers website is due to
8 the fact that, given the recent departure of his
9 firm, that there haven't been all of the motions to
10 substitute done yet, or did I misunderstand you?

11 A. That's correct.

12 Q. And I apologize, but I want, if you will, to
13 put a little meat on that bone. When you are
14 talking about the motion to substitute counsel, are
15 you referring to all of the cases in which Mr. Noah
16 Radbil is listed as an attorney of record with a
17 Weisberg & Meyers case?

18 A. I am referring to several different blocks of
19 cases. One would be cases filed in federal court
20 where Mr. Radbil is either an attorney or designated
21 attorney in charge.

22 His designations as attorney in charge have
23 been removed from every case except this and the
24 Scarlott case, but he has not yet withdrawn or filed
25 a motion to withdraw in those cases.

1 We have, needless to say, been very occupied
2 with the substance of these. The next set of cases,
3 Mr. Jefferson, is -- or are cases filed in Texas
4 State Court where the firm does not employ any Texas
5 attorneys any longer.

6 In those cases, too, Mr. Radbil, has called the
7 bar and learned -- and it's my understand from a
8 conversation with him -- that those cases are his
9 responsibility and they are not the firm's cases. I
10 certainly cannot abandon him or the clients, so we
11 have agreed that until we can procure competent
12 counsel that he will stay on as Of Counsel.

13 I have become pro hac vice in a couple of those
14 cases. And the other cases, I don't have an exact
15 count, but I believe we are probably talking about
16 15 cases. So that's the second block of cases,
17 cases filed in Texas State Court.

18 And the third block of cases would be unfilled
19 state matters, and there is a short handful of them.
20 All of them have been or were engaged or retained
21 well before he departed. And since he departed,
22 there is no new or are no new Texas state clients
23 being engaged by the firm.

24 I hope I answered that.

25 Q. I appreciate it very much. Thank you very

1 much.

2 Just for point of clarification with respect to
3 these unfiled cases, the way your firm operates is
4 you have a written contingency fee contract with
5 these folks, correct?

6 A. A fee shifting and/or a contingency agreement,
7 yes.

8 Q. Okay. And let me make the distinction this
9 way: None of the cases in which Mr. Radbil is
10 currently listed with respect to the Texas State
11 Court cases, for example, are cases in which the
12 client is actually paid a retainer and is paying a
13 monthly bill.

14 A. That is correct.

15 Q. Just to wrap a bow on all of this --

16 A. Actually, Mr. Jefferson, there are several debt
17 settlement clients. Those are not litigation
18 clients unless we have to defend a lawsuit, but
19 those clients did pay a 250-dollar retainer to the
20 firm and do pay a monthly maintenance fee.

21 Q. I gotcha.

22 A. And there maybe two or three of those.

23 Q. Well, maybe a better way to clarify it would be
24 this. The way the fee contract works with respect
25 to Weisberg & Meyers, the fee contract is a firm fee

1 contract; in other words, the client agrees to hire
2 the law firm as opposed to, say, Noah Radbil in his
3 individual capacity. True?

4 A. That is true.

5 Q. And that is true across the board irrespective
6 of whether it's a state case or a federal case,
7 true?

8 A. The only -- in Texas, yes. The only exception
9 would be if it's a co-counsel case, then the client
10 would retain both firms.

11 Q. Sure. Sure. But just to be clear on this, I
12 want to make sure that when the client retains --
13 irrespective of who the co-counsel is, when they
14 retain the Weisberg & Meyers law firm, just like for
15 example Dr. White did, that fee contract is with the
16 firm as opposed to any lawyer in his or her
17 individual capacity, true?

18 A. I think that's true.

19 Q. Okay. And the Weisberg & Meyers website,
20 that's a secure your website? In other words, Noah
21 has departed from the firm, and he doesn't have the
22 ability to go in and hack your website and make
23 changes or modifications to it, true?

24 A. I'm sure that's true.

25 Q. Okay. Now, one of the questions that was --

1 that you brought up in your -- in your own direct
2 was a situation involving this Court's approval of
3 your law firm and Mr. Radbil as class counsel, but I
4 don't believe that you referred to the case in
5 particular. Is that the case of Powell v.
6 Procollect?

7 A. Yes.

8 Q. And did this Court approve not only your firm
9 as class counsel, but did it award fees?

10 A. Yes.

11 Q. Okay. And was Mr. Noah Radbil involved in that
12 case?

13 A. Yes.

14 THE COURT: What was the case number,
15 Mr. Jefferson?

16 MR. JEFFERSON: It is 3:11-CV-0846.

17 THE COURT: What's the initial on the end?

18 MR. JEFFERSON: M.

19 THE COURT: So it was Judge Lynn.

20 MR. JEFFERSON: Okay.

21 Q. (By Mr. Jefferson) Did the case resolve?

22 A. Yes.

23 Q. Is that case now closed?

24 A. Yes.

25 Q. All right. And do you know whether or not the

1 order in that case was ultimately signed by Judge
2 Boyle?

3 A. Until Judge Boyle said what she just said, I
4 was under the impression she was, but now I am
5 second-guessing that.

6 Q. Would it help you if I showed it to you?

7 A. Sure.

8 MR. JEFFERSON: Your Honor, may I
9 approach?

10 THE COURT: You may.

11 A. Thank you.

12 Q. (By Mr. Jefferson) Mr. Meyers, for the record,
13 do you recognize that document as the order upon
14 which I was just questioning you?

15 A. Yes.

16 Q. Have you had a moment to peruse that order?

17 THE COURT: Would you hand it to me,
18 please?

19 MR. MEYERS: Yes, I have reviewed it
20 before.

21 Q. (By Mr. Jefferson) And does that refresh your
22 recollection about who signed it?

23 A. Yes.

24 Q. Okay. Let's move to the next topic. If you
25 could, sir, do you have in front of you Mr. Radbil's

1 exhibits?

2 A. Yes.

3 Q. Okay.

4 A. Hang on one second, please.

5 THE COURT: This was a case that I think I
6 handled the settlement part for Judge Lynn in the
7 summer a year ago. I'm remembering the case; it was
8 assigned to Judge Lynn.

9 MR. RADBIL: That's correct, Your Honor.

10 MR. MEYERS: Yes, I do. Mr. Jefferson --

11 MR. JEFFERSON: Your Honor, can I get that
12 back from you? Thank you.

13 Q. (By Mr. Jefferson) Okay. Let's look at
14 Exhibit Number 5.

15 Do you understand that one of the allegations
16 that's been made in this case is -- has to do with
17 vexatious litigation and the way settlements are
18 handled? You know that, sir, correct?

19 A. Yes.

20 Q. Okay. Let's look at Exhibit Number 5. Briefly
21 just tell the Court what Exhibit Number 5 is.

22 A. This is a letter that was sent to the
23 defendant, certified mail return receipt, notifying
24 them of the claims that Dr. White, through our
25 office, was making prior to the filing of a lawsuit.

1 Q. Okay. And they were made by your firm to
2 Regional Adjustment Bureau?

3 A. Yes.

4 Q. And did you get a response where they
5 ignored -- what happened?

6 A. I don't have a specific recollection. But I am
7 going to assume, since a suit was filed, that this
8 and the follow-up letter that was sent were ignored,
9 but certainly I could be wrong.

10 Q. Okay. Let me ask it to you this way: Would it
11 be fair to assume that RAB in this case had an
12 opportunity to participate in pre-suit negotiations,
13 given the tenor of this letter?

14 A. Yes.

15 Q. Okay. Sir, if you would, please, let's go to
16 Mr. Radbil's Exhibit Number 1.

17 A. Number 1?

18 Q. Yes.

19 A. Okay.

20 Q. Do you understand that one of the allegations
21 being made in this case has to do with the way that
22 settlements were conducted? Have you seen
23 Exhibit Number 1 before?

24 A. I have.

25 Q. Okay. And do you recognize Judge Stickney as

1 being a U.S. Magistrate Judge?

2 A. Yes.

3 Q. And this Exhibit Number 1 is the judge's -- the
4 magistrate judge's settlement report?

5 A. Yes.

6 Q. Okay. And based upon your review of this
7 document, do you have an opinion as to whether or
8 not settlement negotiations were conducted in good
9 faith between Mr. Radbil on behalf of your law firm
10 and Ms. Malone on behalf of her client?

11 A. The order says -- or the settlement report, I'm
12 sorry, says that they were.

13 Q. Okay. And do you have any reason to dispute
14 what Magistrate Stickney had to say in this order?

15 A. No, I don't.

16 Q. Okay. Do you see from the order who all was
17 present?

18 A. Yes.

19 Q. And one of the persons that was present was, in
20 fact, the plaintiff, Dr. White, correct?

21 A. Yes.

22 Q. Okay. And have you seen any documents filed by
23 any side in the underlying case that attempted to
24 refute the findings of the magistrate that the
25 negotiations were conducted in good faith?

1 A. I believe that that is one of the general
2 themes of Ms. Malone's motion that we were not
3 participating in settlement.

4 Q. Okay. Well, let me -- maybe my question was
5 poorly worded, so I apologize. My question is:
6 Were there any contemporaneous complaints filed once
7 the magistrate's order came out?

8 A. Not that I'm aware of.

9 Q. Okay. If you would, sir, please turn to
10 Exhibit--

11 A. Mr. Jefferson, hang on one second. I do
12 recall -- if I may just have a moment just to --
13 review.

14 THE COURT: Go ahead.

15 MR. JEFFERSON: Certainly.

16 MR. MEYERS:

17 A. -- an e-mail between Ms. Malone and I just to
18 make sure I am being accurate. One moment, please.

19 I am looking at 21 right now of
20 Weisberg & Meyers, but I'm not pointing to anything
21 yet.

22 Q. (By Mr. Jefferson) Let me ask the question
23 this way, Mr. Meyers, and certainly I want to give
24 you whatever time you need to review those
25 documents. But were any written objections made to

1 the magistrate's report?

2 A. Not that I'm aware of, no.

3 Q. Okay. And tell me when you are finished with
4 that exhibit. I want to move on, but I want to give
5 you an opportunity to do whatever you need to do.

6 A. Thank you.

7 I see that prior to the settlement conference
8 that Ms. Malone -- but after this Court granted
9 summary judgment, partial summary judgment in
10 Dr. White's favor, that Ms. Malone and I began to
11 engage in settlement negotiations.

12 I believe, though I'm not sure, that this was
13 the case where Ms. Malone noted to me that our
14 client would listen to the magistrate, but I am not
15 sure of that.

16 So to the extent that that constitutes some
17 sort of objection or feelings that there weren't
18 good faith negotiations, just to be clear.

19 Q. Okay. Well, since you brought up the issue of
20 the partial summary judgment, for timeline purposes,
21 when was that garnered?

22 A. That was prior to this settlement conference.
23 I believe that was late November of 2012.

24 Q. Okay. And so to put that into context, if you
25 would, sir, in Mr. Radbil's exhibit book, if you

1 would turn to Exhibit Number 34, specifically
2 Exhibit A to 34.

3 A. Okay.

4 Q. Okay. And this, of course, is a document from
5 2011, correct?

6 A. Yes.

7 Q. Okay. So this is more than a year prior to the
8 summary judgment that you just got through
9 discussing, correct?

10 A. Yes.

11 THE COURT: Are we looking, Mr. Jefferson,
12 at Radbil's Exhibit 34?

13 MR. JEFFERSON: Yes, Your Honor, Exhibit A
14 to Exhibit Number 34.

15 THE COURT: Okay. All right. Go ahead.

16 MR. JEFFERSON: And are you with me, Your
17 Honor?

18 THE COURT: Yes, I am.

19 MR. JEFFERSON: Okay. Thank you.

20 Q. (By Mr. Jefferson) And you will notice on here
21 that this is an e-mail sent from you to a gentleman
22 at graycats@hotmail.com. Do you recognize that as
23 Dr. White's e-mail address?

24 A. Yes.

25 Q. And there is a cc on here to Dennis Kurz,

1 correct?

2 A. Yes.

3 Q. This is at a point in time in which Mr. Noah
4 Radbil -- let me ask you, is Mr. Noah Radbil a
5 lawyer on this case at this time, or do you know?

6 A. I don't know the answer to that.

7 Q. Okay. And so if he is, he's not copied on this
8 e-mail from you. But regardless, does this e-mail
9 document or reflect conversations that you had with
10 your client regarding settlement negotiations and a
11 Rule 68 offer?

12 A. Yes.

13 Q. And without getting into the specifics, did
14 this -- the e-mail starts off by saying: It was a
15 pleasure speaking with you today.

16 So would it be fair to assume that what
17 preceded that particular e-mail was actually some
18 sort of telephonic client conference?

19 A. Yes.

20 Q. And without getting into the specifics, was the
21 purpose of that telephonic client conference, for
22 you as the team leader or whatever your title was,
23 to keep Dr. White apprised of what was going on with
24 respect to settlement in this case?

25 A. Yes.

1 Q. Okay. If you would, sir -- and I apologize for
2 jumping around, but I'm trying to keep this in
3 somewhat of a logical sequence. Go with me, now, if
4 you will, to Exhibit Number 4 of Mr. Radbil's
5 exhibits. Okay?

6 A. I am there.

7 Q. Okay. And so my question to you is: You
8 recall getting some questions previously from
9 Ms. Malone about the Whatley case, correct?

10 A. I don't know that she asked me any questions
11 about it. I do recall mentioning it in my
12 narrative, but I am not disagreeing with you. I
13 really don't know.

14 Q. Okay. In this particular case, did Mr. Noah
15 Radbil participate in this case?

16 A. Yes.

17 Q. Okay. And it's fair to say that in this case
18 you have liability findings that are in your favor
19 with respect to damages. The damages were a
20 thousand dollars, right?

21 A. For the FDCPA.

22 Q. That's right. And there were other
23 machinations about this case that we have already
24 discussed, true?

25 A. I'm not sure I understand your question,

1 Mr. Jefferson.

2 Q. Okay. Let's just do it this way. Okay? In --
3 ultimately, in -- go to Exhibit Number 9, and I will
4 kind of show you where I am going with this.

5 A. Okay. I'm there.

6 Q. Okay. And in that case, did Ms. Malone's
7 client move for sanctions against your client and
8 the firm in that case?

9 A. Yes. This is a different case than the Whatley
10 case that we were just speaking about.

11 Q. Yes. And just so this is clear, this is the
12 Thomas E. Whatley case, right?

13 A. Yes. This is one of the three cases I refer to
14 as White, Whatley, and Whatley.

15 Q. Just for the record, there are two Whatley
16 cases. So this is Thomas Whatley v. AHF Financial
17 Services, LLC, and others, correct?

18 A. Yes.

19 Q. And that was in the United States District
20 Court for the Eastern District of Texas?

21 A. Yes.

22 Q. Okay. And in that case, was a motion for
23 sanctions made against your client and your law
24 firm?

25 A. Yes.

1 Q. And was that motion denied?

2 A. Yes.

3 Q. Okay. All right. In that case, was one of the
4 complaints lodged against your law firm by
5 Ms. Malone a complaint that you multiplied the
6 proceedings unreasonably or vexatiously, in other
7 words, a 1927 Motion?

8 A. Yes.

9 Q. And that part was denied as well, correct?

10 A. Yes.

11 Q. All right.

12 MS. MALONE: Your Honor, can I interrupt?

13 THE COURT: Yes, Ms. Malone.

14 MS. MALONE: I just want to make sure the
15 Court understands that the case -- and I think
16 Mr. Meyers is trying to clarify. The case in which
17 there was a verdict against my client was a
18 different case in which there was a 1927 Motion. In
19 that case, my client prevailed on summary judgment.
20 And I think Mr. Meyers is trying to make that clear.
21 Their names are very similar, so it's confusing
22 except perhaps to the lawyers that were involved.
23 MR. JEFFERSON: Yes, I appreciate that.
24 That's why I wanted to go back and point out that
25 the first one, Exhibit 4, is the CreditWatch

1 Services Thomas Whatley case. The one I am
2 questioning on now with respect to Exhibits 9 and 10
3 is the Whatley v. AHF case. So I apologize if I
4 caused the confusion.

5 Q. (By Mr. Jefferson) And likewise, just to wrap
6 this up, with respect to Exhibit Number 10, there
7 was also a report and recommendation of the
8 magistrate judge considering the defendant's joint
9 motion for attorney's fees and costs in the Whatley
10 v. AHF case, correct?

11 A. Yes.

12 Q. And what did the federal magistrate judge do
13 with respect to that motion?

14 A. The Court denied the motion.

15 Q. Okay. And then, ultimately, if we can look at
16 Exhibits 11 and 12 very briefly -- and I will just
17 kind of shorthand it for reasons of time -- would
18 you agree that there were signed orders adopting the
19 report and recommendation of the magistrate judge
20 with respect to the denying of sanctions and
21 attorney's fees?

22 A. Yes.

23 Q. Okay. Now I want to ask you just a couple of
24 other questions. There were some questions that
25 were posited to you by the Court regarding some of

1 the deficiencies with the motions for pro hac vice
2 and the Washington State Court.

3 My question to you is: Who was -- or let me
4 put it this way. Weisberg & Meyers were the folks
5 that were in charge of finding the associated
6 counsel that would appear as local counsel in the
7 pro hac vice motions as opposed to non-partner folks
8 like Mr. Noah Radbil, correct?

9 A. I think I would have been responsible for that,
10 yes.

11 Q. And ultimately in those cases, were either
12 Mr. Noah Radbil or your law firm ever sanctioned in
13 those Washington courts?

14 A. No. And you were asking, Mr. Jefferson, about
15 the Whatley v. CreditWatch case. The judge there
16 noted, at least as to part of Ms. Malone's motion,
17 that the situation was of their own making.

18 Q. Okay. And I think maybe -- and maybe I'm the
19 person that's confused, but I want to make sure that
20 the record is correct, because you said Whatley v.
21 CreditWatch. Did you mean AHF?

22 A. I did.

23 Q. Okay. That's all right. I made the same
24 mistake earlier. Anything else that you needed to
25 add on that?

1 A. That order is in Exhibit 15 of my book. I'm
2 not sure if it's in your book.

3 Q. Okay. And then finally, let me ask you this
4 question: Have you ever believed -- irrespective of
5 whether or not there were mistakes made or errors in
6 judgment, however you want to categorize them, have
7 you ever believed that any attorney associated with
8 Weisberg & Meyers who worked on the Timothy White
9 case acted in bad faith?

10 A. I have not.

11 MR. JEFFERSON: Thank you. That's all I
12 have, Your Honor.

13 THE COURT: Ms. Malone.

14 MS. MALONE: Thank you, Your Honor.

15 **REDIRECT EXAMINATION**

16 Q. (By Ms. Malone) Mr. Meyers, there's something
17 that you said earlier that I just wanted to clarify.
18 When you were talking with the Court about the
19 Stovall order involving Mr. Weisberg and your firm
20 you said, In light of the Court's sanctions and bar
21 complaint, was there an attendant bar complaint that
22 was filed on that case?

23 A. I did not say that.

24 Q. That's what I heard, and it may be a
25 misunderstanding, that's why I'm asking you, sir.

1 Was there an attendant bar complaint?

2 A. No.

3 Q. That's fine. I just wanted to make sure I
4 understood what you said. Thank you.

5 Is Mr. Radbil getting paid on the cases in
6 which he continues as Of Counsel?

7 A. He is not, and that is a bone of contention
8 that him and I have to work out.

9 Q. Do you anticipate Mr. Radbil being paid in the
10 fee shifting area if you receive costs or attorney's
11 fees in those cases?

12 A. No.

13 Q. So if your firm is awarded attorney's fees in
14 those cases, you do not anticipate Mr. Radbil being
15 compensated for his time.

16 A. He won't be.

17 Q. Even though he's doing work.

18 A. Yes. For cases that he worked on while he was
19 at the firm, his salary covered that and the firm
20 obviously recovers the fees. For cases that him and
21 I have to either have him take or substitute
22 competent Texas counsel, I'm going to have to
23 compensate him for his time --

24 Q. Okay. And you will --

25 A. -- win or lose.

1 Q. Okay. And you would be submitting invoices to
2 the other side or to the Court for payment under
3 those fee shifting statutes that would include
4 Mr. Radbil's time in this interim period of time.
5 Is that fair?

6 A. I don't know the answer to that.

7 Q. Okay. On your website as of a few days ago,
8 Mr. Ehrlich is also still listed as Of Counsel,
9 correct?

10 A. Yes.

11 Q. So both Mr. Ehrlich and Mr. Radbil are no
12 longer members of your firm.

13 A. That is right.

14 Q. And they are both listed as Of Counsel on your
15 website.

16 A. Mr. Ehrlich is listed the same way for the same
17 reason as Mr. Radbil are. There are cases that were
18 engaged by Weisberg & Meyers when he was there, and
19 now he has left, but I still feel like I am
20 responsible for those cases.

21 Q. You took a moment to talk to the Court about an
22 exhibit in your binder, 29, which was an e-mail
23 between an attorney in Florida and Mr. Weisberg. Do
24 you remember that?

25 A. Yes.

1 Q. The date of that e-mail is February 28, 2013,
2 correct?

3 A. I'm going to it. Yes, it is.

4 Q. And Mr. Golden suggested that you might want to
5 speak with me, correct?

6 A. Yes.

7 Q. And in the e-mail that you told the Court that
8 you reached out to me to see if we could find a
9 resolution to this issue is in Exhibit Number 30,
10 which is October 1st, 2013, correct, Mr. Meyers?

11 A. Yes.

12 Q. And no contact about potential resolution
13 between those, other than my asking you if you would
14 like to speak, correct?

15 A. You approached me on two occasions, yes.

16 Q. So the only communication was me saying,
17 Mr. Meyers, would you like to talk about this, or
18 words to that effect, and no response from you. Is
19 that correct?

20 A. I did respond, but -- I believe your point is
21 correct, that I did not invite a conversation with
22 you to resolve this between your client and my firm
23 until October 1st.

24 Q. You told the Court that you would have
25 preferred or would have liked for me to have

1 identified for you things that I thought were
2 misrepresentation on your website, give you the
3 opportunity to correct those matters. Do you recall
4 that?

5 A. Yes.

6 Q. But in the case of the Whaley case, I did reach
7 out to you, Mr. Meyers; my client complained to you,
8 as well, correct?

9 A. Yes.

10 Q. And you did not take those matters down until
11 about a week ago, correct?

12 A. No. I believe that your client reached out to
13 me about the Newswire report, and I believe that
14 that was prior to the second trial. I could be
15 incorrect.

16 THE COURT: Ms. Malone, because there have
17 been so many instances on the Whaley situation,
18 would you remind the exhibit and the representation
19 on the website that was offensive to your client?

20 MS. MALONE: Yes, ma'am, I will. Your
21 Honor, that appears in Exhibit 37 under Noah
22 Radbil's website, Associated Attorney Note. There
23 is a reference to a victory in the Whaley trial.

24 And then the second place that it would
25 matter to the Court is Exhibit Number 39, which is

1 Mr. Meyers' letter to the State Bar of Texas in
2 which he references e-mails attached where I ask him
3 to remove the paid submission to the Law Firm News
4 and just remove references to my client and they
5 would stop complaining.

6 Q. (By Ms. Malone) Do you recall generally that I
7 asked you just to take it down and my client would
8 quit complaining?

9 A. I don't think that that completely describes
10 our conversation, but yes, that was part of the
11 conversation.

12 Q. The Whaley judgment that was entered in this
13 case by Judge Hoffman appears at Exhibit 18 --

14 A. Okay.

15 Q. -- and it's signed by Judge Hoffman on April
16 the 5th of 2013; is that correct?

17 A. Yes.

18 Q. You did not remove that from your website,
19 though, until last week sometime, correct?

20 A. Yes.

21 Q. Now, Mr. Meyers, if Mr. Radbil had indicated to
22 us that you control the information on the website
23 and that he didn't have the authority to remove that
24 from his biography, would Mr. Radbil be incorrect?

25 A. Well, like I said before, I don't write

1 people's bios. So anything that's written there is
2 written -- with the exception of my bio, is written
3 by other people. Had someone said to me, I would
4 like this updated, it certainly would have been
5 updated. But I do think that it's correct that I do
6 control the website.

7 Q. Who wrote Mr. Radbil's bio?

8 A. I'm sure Mr. Radbil did.

9 Q. So in the case of Aaron Radbil, he wrote that,
10 as well?

11 A. Yes.

12 Q. So if Mr. Radbil told us during the discussion
13 of the Whaley case that a potential resolution would
14 be to remove that from the website, that he could
15 not do that without your authority, would that be
16 wrong?

17 A. I assume that -- I think that that would be
18 right, but that is not something that I would have
19 withheld.

20 Q. So you're saying he would have had -- he would
21 have to have had your permission to remove it from
22 the website, he could not have done it on his own?

23 A. I think that the webmaster would have received
24 a request from Mr. Radbil and that the webmaster
25 would have asked me prior to doing it. I think

1 that's what would have occurred.

2 Q. And you would have freely given him that
3 permission at his request?

4 A. Yes.

5 MS. MALONE: No further questions.

6 THE COURT: Who was the webmaster? I
7 didn't think you knew who that was.

8 MR. MEYERS: The webmasters's name is
9 Matthew Smelley (phonetic).

10 THE COURT: I have a couple of questions
11 on this website, looking at Exhibit 37 in RAB's
12 exhibits, if you have that, if you will go to that.

13 MR. MEYERS: Yes.

14 THE COURT: Now, I don't know the date of
15 this posting, but I know that Mr. Radbil has been
16 practicing about since 2009, as I recall. Do you
17 have this?

18 MR. MEYERS: Yes.

19 THE COURT: I want to go down to -- sort
20 of towards under, Notable Representations.

21 MR. MEYERS: Okay.

22 THE COURT: Okay. You go down to, there
23 is a big paragraph, and right under that one it says
24 that Mr. Radbil served as plaintiff's counsel for a
25 major league baseball player in a seven-figure

1 breach of fiduciary duty case.

2 Could you tell me who that was?

3 MR. MEYERS: No, I couldn't.

4 THE COURT: Could that have happened in
5 connection with your firm?

6 MR. MEYERS: No.

7 THE COURT: So this brand-new lawyer is
8 working with a major league baseball player and a
9 seven-figure salary, and you never heard of that
10 before?

11 MR. MEYERS: That would be before he
12 joined my firm.

13 THE COURT: Would that surprise you that a
14 young lawyer would have that kind of experience?

15 MR. MEYERS: I don't know who he was
16 working with.

17 THE COURT: Okay. Well, it says,
18 Plaintiff's Counsel, it doesn't say, Of Counsel or
19 Among Others.

20 It also says that he served as plaintiff's
21 counsel -- going down a few blurbs -- for several
22 authors in a copyright infringement class action
23 against S-C-R-I-B-D, the world's largest social
24 publishing company. Now both of these last two
25 entries are far above and away the kind of clients

1 that you have described Mr. Radbil being associated
2 through the FDCPA or TBCPA type cases. Do you know
3 who this would have been?

4 MR. MEYERS: I do not.

5 THE COURT: These are large cases that
6 would have not been involved with anything in your
7 firm.

8 MR. MEYERS: Correct.

9 THE COURT: Okay. Yet, he's only
10 practiced since 2009. Does this surprise you?

11 MR. MEYERS: You know, Your Honor, I rely
12 on people to write a biography that's accurate, so I
13 never thought about it.

14 THE COURT: So then he's among several --
15 next one down, several lawyers in law firms
16 representing a group of former NCAA Division I
17 student-athletes in a class action against videogame
18 producer EA Sports and the NCAA for use of -- for
19 sale and use of student-athlete likenesses.

20 Do you know any of the student athletes
21 that would have been connected with that?

22 MR. MEYERS: Again, Your Honor, it's not
23 our case. I have no idea.

24 THE COURT: But these are much, much
25 larger and much more substantive cases than you have

1 described have been under Mr. Radbil's authority in
2 your firm; is that right?

3 MR. MEYERS: Yeah, I think that's right.

4 THE COURT: But you think this is true?

5 MR. MEYERS: I have no reason to think it
6 isn't true, Your Honor. But again, I rely on people
7 to write a biography that's accurate.

8 THE COURT: Again, just going back up to
9 the first representation, Notable Representations.
10 Mr. Radbil served as lead counsel for a real estate
11 development firm in a seven-figure condemnation
12 action concerning a City of Houston public museum.
13 Any knowledge of that?

14 MR. MEYERS: No, Your Honor.

15 THE COURT: Okay. These aren't the kind
16 of cases that some lawyers wouldn't have any
17 authority over for ten or 15 years in their practice
18 normally, wouldn't you say?

19 MR. MEYERS: I think that might be
20 accurate.

21 THE COURT: People with 15 years of
22 experience would be fighting over these kind of
23 cases as I would see.

24 MR. MEYERS: That's probably correct, Your
25 Honor.

1 THE COURT: That's all I have. Anything
2 else.

3 MR. JEFFERSON: Yes, Your Honor, I have
4 just a few.

5 **RECROSS-EXAMINATION**

6 Q. (By Mr. Jefferson) And let me, just for
7 purposes of -- do you know anything about
8 Mr. Radbil's prior employers, like the Ahmad
9 Zavitsanos firm in Houston or the Camara & Sibley
10 firm, do you know anything about them or what kind
11 of cases they handle?

12 A. A little bit; a little bit.

13 Q. Okay. Now let me ask you this question: Do
14 you know enough about those law firms to speculate
15 as to who their clientele is?

16 A. Well, AZA, the first firm you mentioned, we met
17 them, so to speak, because they represented Mercedes
18 in a couple of lemon law claims. I don't think that
19 at that time I even knew who Mr. Radbil was.

20 Camara Sibley, Sibley was the lawyer who worked
21 at AZA on the lemon law cases, so I had some
22 experience with Mr. Sibley previously.

23 Mr. Camara's reputation is fairly well known.
24 But for the -- with the exception of some co-counsel
25 cases with Camara & Sibley when I first met

1 Mr. Radbil, this one, when he was working there, at
2 a dinner with I believe Mr. Ahmad and several
3 members of Camara & Sibley, I don't know a great
4 deal about what they do.

5 MS. MALONE: I'm sorry. May I interrupt?
6 And I apologize to the Court. But I think it would
7 be helpful if Mr. Jefferson was willing -- if
8 Mr. Radbil could tell us how long he was with those
9 firms and what his positions were.

10 THE COURT: At some point we need to
11 determine that. If that's part of your protocols
12 today, I'm not going to have you --

13 MR. JEFFERSON: Again, Your Honor, one of
14 the things we plan on doing is calling Mr. Radbil
15 back to the stand. And certainly I agree that some
16 of those questions would be fair game.

17 All I'm trying to establish with this
18 gentleman is the nature, if any, of his
19 understanding of Mr. Radbil's prior employers, not
20 the specifics of any of the cases.

21 THE COURT: That's fine. Thank you.

22 Q. (By Mr. Jefferson) And one of the reasons we
23 call them AZA is because the firm is actually Ahmad,
24 Zavitsanos & Anaipakos. I'm sure the court reporter
25 will not need help spelling those names.

1 A. I take your word for it.

2 Q. Fortunately, it's on the exhibit before you.

3 One last question: Ms. Malone just got through
4 asking you some questions about, well, if Mr. Radbil
5 assists during the wind-down process of making sure
6 that there is somebody else enrolled in his place
7 before he steps out and leaves the person
8 unrepresented, you said in response to one of
9 Ms. Malone's questions that you may submit Noah
10 Radbil's time on those cases. Do you recall those
11 questions?

12 A. I do. I said -- I believe I said I don't know
13 if I would submit his time. I haven't even thought
14 about it.

15 Q. Fair enough. Thank you for that clarification,
16 A; and B, would you agree with me that you would
17 also have to get Mr. Radbil's permission to submit
18 that time before you could do so?

19 A. Yes.

20 Q. Okay. And as you sit here today, you do not
21 have that permission, true?

22 A. I think that's true.

23 MR. JEFFERSON: Okay. Thank you, sir.

24 THE COURT: Where are we? Anything else,
25 Mr. Meyers.

1 MR. MEYERS: Not at this time.

2 THE COURT: All right.

3 MS. MALONE: I think that I was going to
4 take the stand and Mr. Martin was going to question
5 me.

6 THE COURT: It's been a long day. Let's
7 talk before everybody leaves about the next
8 available calendar date. And I was wondering if our
9 court coordinator is here, if you could ask
10 Mr. Reynolds to come out. Do you have some dates?

11 MR. JEFFERSON: I asked my secretary to
12 send me dates, so I ask for permission to do that?

13 THE COURT: Absolutely.

14 You may step down.

15 MR. MEYERS: May I also get available
16 dates from my office?

17 THE COURT: Yes, please. Actually, what I
18 think I will do is have Mr. Reynolds talk to you all
19 and everybody look at their dates and we will do it
20 then. I appreciate the patience. I have all of the
21 exhibits. I have exhibits up here. I'm not sure
22 whose all of these are, but I would ask that we
23 don't leave anything duplicative here. Please take
24 your exhibits back.

25 MS. MALONE: What about the set for the

1 court reporter?

2 THE COURT: She'll take care of them.

3 Go ahead and leave it. I'm just worried
4 about all of this up here, all of the affidavits and
5 all of that. So what we are talking about are three
6 notebooks: The Radbil exhibits; your exhibits,
7 which are both in separate notebooks; and then
8 Mr. Meyers', which are in three big notebooks. And
9 I don't know that we need two or three copies of the
10 three notebooks. Do we have those?

11 MS. MALONE: Maybe I was confused, but I
12 thought Mr. Meyers had brought a copy for the court
13 reporter. I think both Mr. Jefferson and I brought
14 copies for the court reporter that we were using for
15 the witness, and I believe ours are the two
16 notebooks sitting there.

17 THE COURT: Let's just do this: All I
18 want to do is make sure that when you all leave here
19 we know what we have and you know what you have so
20 we don't have notebooks sitting around that don't
21 have an owner.

22 If you can figure that out, we will
23 recess, and I will see you back here at the next
24 hearing.

25 (Court in recess at 3:44 p.m.)

C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify
that the foregoing is a transcript from the record
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees
format comply with those prescribed by the Court and
the Judicial Conference of the United States.

This 30th day of October 2013.

s/Shawnie Archuleta
Shawnie Archuleta CCR No. 7533
Official Court Reporter
The Northern District of Texas
Dallas Division

My CSR license expires: December 31, 2013

Business address: 1100 Commerce Street
Dallas, TX 75242

Telephone Number: 214.753.2747

SHAWNIE ARCHULETA, CSR/CRR
FEDERAL COURT REPORTER - 214.753.2747